

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** February 24, 2017

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

Jury Instructions: Additions and Revisions to Criminal Jury Instructions

*Committee or other entity submitting the proposal:*

Judicial Council Advisory Committee on Criminal Jury Instructions

*Staff contact (name, phone and e-mail):* Robin Seeley, 415-865-7710, robin.seeley@jud.ca.gov

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

Approved by RUPRO: December 15, 2016

Project description from annual agenda: Compliance with Rule of Court 10.59

*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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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 23–24, 2017

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<b>Title</b>	<b>Agenda Item Type</b>
Jury Instructions: Additions and Revisions to Criminal Jury Instructions	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
<i>Judicial Council of California Criminal Jury Instructions (CALCRIM)</i>	March 24, 2017
<b>Recommended by</b>	<b>Date of Report</b>
Advisory Committee on Criminal Jury Instructions Hon. Sandy R. Kriegler, Chair	February 3, 2017
	<b>Contact</b>
	Robin Seeley, 415-865-7710 <a href="mailto:robin.seeley@jud.ca.gov">robin.seeley@jud.ca.gov</a>

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### Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approval of the proposed revisions and additions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes will keep *CALCRIM* current with statutory and case authority.

### Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective March 24, 2017, approve for publication under rule 2.1050 of the California Rules of Court the criminal jury instructions prepared by the committee. Once approved, the revised instructions will be published in the next official edition of the *Judicial Council of California Criminal Jury Instructions*.

A table of contents and the proposed revisions to the criminal jury instructions are attached at pages 9–168.

## **Previous Council Action**

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the advisory committee and its charge.<sup>1</sup> In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court. Since that time, the committee has complied with both rules by regularly proposing additions and changes to *CALCRIM* to the council.

The council approved the last *CALCRIM* release at its August 2016 meeting.

## **Rationale for Recommendation**

The committee recommends proposed revisions to the following instructions: *CALCRIM* Nos. 252, 361, 370, 522, 523, 729, 801, 830, 850, 902, 904, 937, 947, 960, 1082, 1124, 1125, 1126, 1202, 1301, 1350, 1351, 1352, 1354, 1355, 1502, 1600, 1650, 2130, 2131, 2500, 2722, 2723, 3428, 3472, 3477.

The committee recommends deleting *CALCRIM* Nos. 852, 853, and 1191 and replacing them with new instructions: 852A, 852B, 853A, 853B, 1191A, 1191B.

The committee revised the instructions based on comments or suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

### **Additional admonitions about giving *CALCRIM* No. 370 on motive**

During the last *CALCRIM* revision cycle, the council approved revisions following the Court of Appeal opinion in *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165. In that case, the Court of Appeal reversed in part the conviction of a serial child molester because the court gave an unmodified version of *CALCRIM* No. 370, which states that the People need not prove motive. As a result, the committee supplemented (or made more prominent) admonitions in the bench notes of *CALCRIM* Nos. 1121–1126 about when not to give *CALCRIM* No. 370. All of those crimes have motive as an element.

During this revision cycle, the committee recommends adding similar admonitions to the hate crimes jury instructions for both substantive crimes and sentencing enhancements—*CALCRIM* Nos. 523, 729, 902, 904, 947, 1350, 1351, 1352, 1354, 1355—which also can have motive as an element. It also recommends revising *CALCRIM* No. 370 so that it can apply to both substantive crimes and sentencing enhancements.

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<sup>1</sup> Rule 10.59(a) states: “The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.”

**CALCRIM Nos. 852A & B, 853A & B, and 1191A & B on Using Evidence of Uncharged Crimes: *People v. Cruz***

*People v. Cruz* (2016) 2 Cal.App.5th 1178, 1185–1186, held that CALJIC No. 2.50.01, Evidence of Other Sexual Offenses, improperly reduced the People’s burden of proof by suggesting that evidence of charged sexual offenses to show propensity could be proved by a preponderance of the evidence. *Cruz* expressly noted the CALCRIM analog, No. 1191, did not share the same flaw because it only refers to uncharged sexual offenses. CALCRIM Nos. 852 and 853 instruct on evidence of uncharged domestic violence and elder or dependent person abuse, respectively and could raise the same issues.

The committee decided that even though the CALCRIM instructions were correct as written, providing two distinct instructions for each of these evidentiary instructions could improve clarity and help prevent error. It therefore proposes two different versions of each of these evidentiary instructions: one for uncharged crimes and the other for charged crimes.

**CALCRIM No. 3428, Mental Impairment: Defense to Specific Intent or Mental State, *People v. Ocegueda*, *People v. McGehee***

*People v. Ocegueda* (2016) 247 Cal.App.4th 1393, 1407, held that it was error to insert “intent to kill” instead of “express malice” as the required intent in paragraph two of CALCRIM No. 3428. The instruction language includes a blank for users to insert the correct specific intent or mental state. To help prevent the user error identified in *Ocegueda*, the committee added the case cite along with a cautionary bench note.

*People v. McGehee* (2016) 246 Cal.App.4th 1190, 1205, found that giving CALCRIM No. 3428 together with CALCRIM No. 362, *Consciousness of Guilt: False Statements*, could require modification of the former to ensure it does not prevent the jury from considering evidence of a defendant’s mental illness or impairment for a purpose other than deciding whether that defendant had the required mental state for murder. The committee added another cautionary bench note to alert users to this potential problem.

**CALCRIM Nos. 2130 and 2131, Refusal Instructions**

Judge Ethan P. Schulman, Superior Court of San Francisco County, suggested adding language to these instructions to make clear that a motorist’s silence following the mandatory implied consent admonition about taking or completing a chemical test may be a “refusal.” The committee recommends adding the new, optional language to these instructions as well as an entry in the authority section of the bench notes to make clear that silence may constitute a refusal.

**Comments, Alternatives Considered, and Policy Implications**

The proposed additions and revisions to *CALCRIM* circulated for comment from November 22, 2016, through January 6, 2017. The committee received input from four different commentators:

the Orange County Bar Association, and three superior court judges. See the attached comment chart at pages 5–8.

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. The proposed revised instructions are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

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

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council’s contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

### **Attachments**

1. Comment chart, at pages 5–8
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 9–168

**Jury Instructions: Additions and Revisions to Criminal Jury Instructions  
New and Revised CALCRIM Instructions**

Instruction	Commentator	Comment	Response
252, 361, 370, 523, 729, 902, 904, 947, 1350, 1351, 1352, 1354, 1355, 604, 3428, 801, 830, 850, 852A&B, 853A&B, 1191A&B, 937, 960, 1082, 1124, 1125, 1126, 1301, 1502, 1650, 2130, 2131, 2500, 2722, 2723, 3472, 3477	Michael L. Baroni, President, Orange County Bar Association	Agree with all additions and proposed changes	No response necessary
522	Michael L. Baroni, President, Orange County Bar Association	The proposed amendment to CALCRIM 522 adds a citation to <i>People v. Rogers</i> (2006) 39 Cal.4th 826, 877-880, strikes the citation to <i>People v. Middleton</i> (1997) 52 Cal.App.4th 19, 31 and strikes the following language: “This is a pinpoint instruction, to be given upon request.” We agree with the addition of the citation to <i>Rogers</i> . We, however, see no harm in keeping the citation to <i>Middleton</i> . However, we disagree with the deletion of the quoted language. In <i>Rogers</i> , the court, citing <i>People v. Saille</i> (1991) 54 Cal.3d 1103, reaffirmed that that CALJIC 8.73, the analogue to CALCRIM 522 is a pinpoint instruction to which a defendant is entitled to upon request. ( <i>People v. Rogers, supra</i> , 39 Cal.4th 826, 878-879.)	The committee disagrees with this comment and believes that the citation to the Supreme Court case is sufficient, although it will retain the reference to this being a pinpoint instruction.

**Jury Instructions: Additions and Revisions to Criminal Jury Instructions  
New and Revised CALCRIM Instructions**

1600	Michael L. Baroni, President, Orange County Bar Association	Instructional element #6 deletes the words “to take the property.” While the striking of these words in the context of the instructional language does not change the legal definition of the offense, the omission of such language could potentially cause confusion to lay jurors and the deletion of this phrase does not really improve or clarify the instruction. The instruction is better with element #6 remaining as presently drafted.	The committee agrees with this comment. See response to Judge Hite’s comment on the same issue below.
1600	Hon. Kent Hamlin, Fresno County Superior Court Judge	<p>I have no problem with the idea that the phrase in element 6, “to take the property,” should be removed because the crime could be committed by using force to take the property or to prevent the victim from resisting. But if that phrase is removed, it is no longer satisfactory to use “it” to refer to the property in the balance of that element: “(he/she) intended (to deprive the owner of it permanently/ [or] to remove it from the owner’s possession...” What is “it” now that “property” has been removed from the preceding part of the instruction?</p> <p>Instead, element 6 should read as follows in the revised version:</p> <p>6. When the defendant used force or fear, (he/she) intended (to deprive the owner of <b>the property</b> permanently/ [or] to remove it from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property). (Emphasis added.)</p>	The committee agrees with this comment. See response to Judge Hite’s comment on the same issue below.

**Jury Instructions: Additions and Revisions to Criminal Jury Instructions  
New and Revised CALCRIM Instructions**

1600	Hon. Christopher C. Hite and Hon. Jeffrey S. Ross, San Francisco Superior Court	<p>By removing “the property” from element 6, the “it” has no reference.</p> <p>Propose the following change:</p> <p>5. The defendant used force or fear to take the property or to prevent the person from resisting the taking of property;</p> <p>6. When the defendant used force or fear to, (he/she) intended (to deprive the owner of <b>the property</b> permanently/ [or] to remove the property from the owner’s possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property).</p>	The committee agrees with this comment, which identifies the same issue as the two comments above. The committee has made revisions in keeping with this commentator’s suggestion.
2130, 2131	Hon. Christopher C. Hite, San Francisco Superior Court	<p>Suggested Revisions for CALCRIM 2130:</p> <p><b>Body of the Instruction</b>          [(A defendant's silence in response to an officer's request to submit to a chemical test! [or] (A/)a failure to complete a chemical test) may be a refusal. <b>If you conclude that the defendant refused to submit to such a test by his or her silence, it is up to you to decide the meaning and importance of the refusal. However, evidence that the defendant refused to submit to such a test cannot prove guilt by itself.]</b></p> <p><b>Authority</b>          Silence in Response to Request <b>May</b> Constitute a Refusal. Garcia v. Department</p>	The committee agrees with this comment, including the final note, and has revised these instructions accordingly, with a few further revisions for clarity.

**Jury Instructions: Additions and Revisions to Criminal Jury Instructions  
New and Revised CALCRIM Instructions**

of Motor Vehicles (2010) 185 Cal.App.4th 73, 82-84 [109 Cal.Rptr.3d 906].

With reference to CALCRIM 2131 the suggested revision would be the following:

Body of the Instruction

**Body of the Instruction**

[(A defendant's silence in response to an officer's request to submit to a chemical test! [or] (A/)a failure to complete a chemical test) may be a refusal. **If you conclude that the defendant was silence in response to an officer's request to submit to a chemical test/[or] (A/) a failure to complete a chemical test, it is up to you to decide if the silence constitutes a refusal.]**

**Authority**

Silence in Response to Request **May** Constitute a Refusal. Garcia v. Department of Motor Vehicles (2010) 185 Cal.App.4th 73, 82-84 [109 Cal.Rptr.3d 906].

Note: It may be better to have the bracketed portion regarding silence at the end of the entire instruction just before the People's burden since it further defines the term "refused," and is not an element of the crime. That would be consistent with other instructions in which phrases were further explained or defined.

# Table of Contents

## CALCRIM Proposed Changes

### March 2017

Instruction Number	Instruction Title
252	Union of Act and Intent: General and Specific Intent Together
361	Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.
370, 523, 729, 902, 904, 947, 1350, 1351, 1352, 1354, 1355	Motive, First Degree Murder: Hate Crime, and other instructions for both substantive crimes as well as sentencing enhancements in which “motive” must be proved
522	Provocation: Effect on Degree of Murder
801	Mayhem
830	Abuse of Elder or Dependent Adult Likely to Produce Great Bodily Harm or Death
850	Testimony on Intimate Partner Battery and Its Effects: Credibility of Complaining Witness
852A & B, 853A & B, 1191A & B	Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc., Evidence of Uncharged Domestic Violence, Evidence of Uncharged Elder or Dependent Person Abuse, Evidence of Uncharged Sex Offense
937	Sexual Battery: By Fraudulent Representation
960	Simple Battery
1082, 1124	Oral Copulation With Person Under 18, Contacting Minor With Intent to Commit Certain Felonies
1125, 1126	Arranging Meeting With Minor for Lewd Purpose, Going to Meeting With Minor for Lewd Purpose
1202	Kidnapping: For Ransom, Reward, or Extortion
1301	Stalking

<b>Instruction Number</b>	<b>Instruction Title</b>
1502	Arson: Inhabited Structure
1600	Robbery
1650	Carjacking
2130, 2131	Refusal—Consciousness of Guilt, Refusal—Enhancement
2500	Illegal Possession, etc., of Weapon
2722, 2723	Battery by Gassing, Battery by Prisoner by Non-Prisoner, Sexual Penetration by Force, Fear, or Threats
3428	Mental Impairment: Defense to Specific Intent or Mental State
3472	Right to Self-Defense: May Not Be Contrived
3477	Presumption That Resident Was Reasonably Afraid of Death or Great Bodily Injury

## 252. Union of Act and Intent: General and Specific Intent Together

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The crime[s] [(and/or) other allegation[s]] charged in Count[s] \_\_ require[s] proof of the union, or joint operation, of act and wrongful intent.

The following crime[s] [and allegation[s]] require[s] general criminal intent: \_\_\_\_\_ <insert name[s] of alleged offense[s] and enhancement[s] and count[s], e.g., battery, as charged in Count 1>. For you to find a person guilty of (this/these) crime[s] [or to find the allegation[s] true], that person must not only commit the prohibited act [or fail to do the required act], but must do so with wrongful intent. A person acts with wrongful intent when he or she intentionally does a prohibited act [or fails to do a required act]; however, it is not required that he or she intend to break the law. The act required is explained in the instruction for that crime [or allegation].

The following crime[s] [and allegation[s]] require[s] a specific intent or mental state: \_\_\_\_\_ <insert name[s] of alleged offense[s] and count[s], e.g., burglary, as charged in Count 1> \_\_\_\_\_ <insert name[s] of enhancement[s]>. For you to find a person guilty of (this/these) crimes [or to find the allegation[s] true], that person must not only intentionally commit the prohibited act [or intentionally fail to do the required act], but must do so with a specific (intent/ [and/or] mental state). The act and the specific (intent/ [and/or] mental state) required are explained in the instruction for that crime [or allegation].

<Repeat next paragraph as needed>

[The specific (intent/ [and/or] mental state) required for the crime of \_\_\_\_\_ <insert name[s] of alleged offense[s] e.g., burglary> is \_\_\_\_\_ <insert specific intent>.]

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New January 2006; Revised June 2007, April 2010, April 2011 [*insert date of council approval*]

### BENCH NOTES

#### *Instructional Duty*

The court has a **sua sponte** duty to instruct on the joint union of act and intent. (*People v. Alvarez* (1996) 14 Cal.4th 155, 220 [58 Cal.Rptr.2d 385, 926 P.2d 365]; *People v. Ford* (1964) 60 Cal.2d 772, 792–793 [36 Cal.Rptr. 620, 388 P.2d 892];

*People v. Jeffers* (1996) 41 Cal.App.4th 917, 920–923 [49 Cal.Rptr.2d 86].) The court may give this instruction in cases involving both offenses requiring a specific intent or mental state and offenses that do not, rather than giving both CALCRIM No. 250 and CALCRIM No. 251.

**Do not** give this instruction if the case involves only offenses requiring a specific intent or mental state or involves only offenses that do not. (See CALCRIM No. 250, *Union of Act and Intent: General Intent*, and CALCRIM No. 251, *Union of Act and Intent: Specific Intent or Mental State*.)

The court should specify for the jury which offenses require general criminal intent and which require a specific intent or mental state by inserting the names of the offenses where indicated in the instruction. (See *People v. Hill* (1967) 67 Cal.2d 105, 118 [60 Cal.Rptr. 234, 429 P.2d 586].) If the crime requires a specific mental state, such as knowledge or malice, the court **must** insert the name of the offense in the third paragraph, explaining the mental state requirement, even if the crime is classified as a general intent offense.

If the defendant is charged with aiding and abetting or conspiracy to commit a general-intent offense, the court **must** instruct on the specific intent required for aiding and abetting or conspiracy. (See *People v. McCoy* (2001) 25 Cal.4th 1111, 1117–1118 [108 Cal.Rptr.2d 188, 24 P.3d 1210]; *People v. Bernhardt* (1963) 222 Cal.App.2d 567, 586–587 [35 Cal.Rptr. 401].)

If the defendant is also charged with a criminal negligence or strict-liability offense, insert the name of the offense where indicated in the first sentence. The court may also give CALCRIM No. 253, *Union of Act and Intent: Criminal Negligence*, or CALCRIM No. 254, *Union of Act and Intent: Strict-Liability Crime*.

### ***Defenses—Instructional Duty***

Evidence of voluntary intoxication or mental impairment may be admitted to show that the defendant did not form the required mental state. (See *People v. Ricardi* (1992) 9 Cal.App.4th 1427, 1432 [12 Cal.Rptr.2d 364].) The court has no sua sponte duty to instruct on these defenses; however, the trial court must give these instructions on request if supported by the evidence. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119 [2 Cal.Rptr.2d 364, 820 P.2d 588]; see *Defenses and Insanity*, CALCRIM No. 3400 et seq.)

## **AUTHORITY**

- Statutory Authority ▶ Pen. Code, § 20; see also Evid. Code, §§ 665, 668.

- Instructional Requirements ▶ *People v. Hill* (1967) 67 Cal.2d 105, 117 [60 Cal.Rptr. 234, 429 P.2d 586]; *People v. Ford* (1964) 60 Cal.2d 772, 792–793 [36 Cal.Rptr. 620, 388 P.2d 892]; *People v. Jeffers* (1996) 41 Cal.App.4th 917, 920–923 [49 Cal.Rptr.2d 86].
- History of General-Intent Requirement ▶ *Morissette v. United States* (1952) 342 U.S. 246 [72 S.Ct. 240, 96 L.Ed. 288]; see also *People v. Garcia* (2001) 25 Cal.4th 744, 754 [107 Cal.Rptr.2d 355, 23 P.3d 590].
- This Instruction Upheld ▶ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1189 [67 Cal.Rptr.3d 871].
- Instruction on Both General and Specific Intent May Be Necessary for Voluntary Manslaughter ▶ *People v. Martinez* (2007) 154 Cal.App.4th 314, 334-336 [64 Cal.Rptr.3d 580].

### *Secondary Sources*

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Elements, §§ 1–6.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][e] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 140, *Challenges to Crimes*, § 140.02[1]–[3] (Matthew Bender).

## **RELATED ISSUES**

See the Bench Notes and Related Issues sections of CALCRIM No. 250, *Union of Act and Intent: General Intent*, and CALCRIM No. 251, *Union of Act and Intent: Specific Intent or Mental State*.

### 361. Failure to Explain or Deny Adverse Testimony

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**If the defendant failed in (his/her) testimony to explain or deny evidence against (him/her), and if (he/she) could reasonably be expected to have done so based on what (he/she) knew, you may consider (his/her) failure to explain or deny in evaluating that evidence. Any such failure is not enough by itself to prove guilt. The People must still prove the defendant guilty beyond a reasonable doubt.**

**If the defendant failed to explain or deny, it is up to you to decide the meaning and importance of that failure.**

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*New January 2006; Revised April 2010, February 2016 [insert date of council approval]*

#### BENCH NOTES

##### ***Instructional Duty***

No authority imposes a duty to give this instruction sua sponte. This instruction should only be given when the defendant testifies and the privilege against self-incrimination has not been successfully invoked. (*People v. Mask* (1986) 188 Cal.App.3d 450, 455 [233 Cal.Rptr. 181]; *People v. Haynes* (1983) 148 Cal.App.3d 1117, 1118 [196 Cal.Rptr. 450].)

Before an instruction on this principle may be given, the trial court **must** ascertain as a matter of law: (1) if a question was asked that called for an explanation or denial of incriminating evidence; (2) if the defendant knew the facts necessary to answer the question or if some circumstance precluded the defendant from knowing such facts; and (3) if the defendant failed to deny or explain the incriminating evidence when answering the question. (*People v. Saddler* (1979) 24 Cal.3d 671, 682–683 [156 Cal.Rptr. 871, 597 P.2d 130] [instruction erroneously given because there was no evidence that defendant failed to deny or explain incriminating evidence]; *People v. Marsh* (1985) 175 Cal.App.3d 987, 994 [221 Cal.Rptr. 311] [same]; *People v. De Larco* (1983) 142 Cal.App.3d 294, 309 [190 Cal.Rptr.757] [same]; see also *People v. Marks* (1988) 45 Cal.3d 1335, 1346 [248 Cal.Rptr. 874, 756 P.2d 260].)

Contradiction of the state's evidence is not by itself a failure to deny or explain. (*People v. Marks* (1988) 45 Cal.3d 1335, 1346 [248 Cal.Rptr. 874, 756 P.2d 260]; *People v. Peters* (1982) 128 Cal.App.3d 75, 86 [180 Cal.Rptr. 76].) Failure to

recall is not an appropriate basis for this instruction. (*People v. De Larco* (1983) 142 Cal.App.3d 294, 309 [190 Cal.Rptr.757].)

~~One court has cautioned against giving this instruction unless both parties agree and there is a significant omission on the part of the defendant to explain or deny adverse evidence. (*People v. Haynes* (1983) 148 Cal.App.3d 1117, 1119–1120 [196 Cal.Rptr. 450].)~~

Give this instruction only when a testifying defendant completely fails to explain or deny incriminating evidence, or claims to lack knowledge although it appears from the evidence that defendant could reasonably be expected to have that knowledge. (*People v. Cortez* (2016) 63 Cal.4th 101, 117-118 [201 Cal.Rptr.3d 846, 369 P.3d 521].)

## AUTHORITY

- Instructional Requirements ▶ Evid. Code, § 413.
- Cautionary Language ▶ *People v. Saddler* (1979) 24 Cal.3d 671, 683 [156 Cal.Rptr. 871, 597 P.2d 130].
- This Instruction Upheld ▶ *People v. Vega* (2015) 236 Cal.App.4th 484, 494-500 [186 Cal.Rptr.3d 671]; *People v. Rodriguez* (2009) 170 Cal.App.4th 1062, 1068 [88 Cal.Rptr.3d 749].

### *Secondary Sources*

3 Witkin, California Evidence (5th ed. 2012) Presentation at Trial, § 102.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 80, *Defendant's Trial Rights*, § 80.08[6][a][i], Ch. 83, *Evidence*, § 83.01[2][b], Ch. 85, *Submission to Jury and Verdict*, §§ 85.01[5], 85.04[2][b] (Matthew Bender).

## RELATED ISSUES

### *Bizarre or Implausible Answers*

If the defendant's denial or explanation is bizarre or implausible, several courts have held that the question whether his or her response is reasonable should be given to the jury with an instruction regarding adverse inferences. (*People v. Mask* (1986) 188 Cal.App.3d 450, 455 [233 Cal.Rptr.181]; *People v. Roehler* (1985) 167 Cal.App.3d 353, 392–393 [213 Cal.Rptr. 353].) However, in *People v. Kondor* (1988) 200 Cal.App.3d 52, 57 [245 Cal.Rptr. 750], the court stated, “the test for

giving the instruction [on failure to deny or explain] is not whether the defendant's testimony is believable. [The instruction] is unwarranted when a defendant explains or denies matters within his or her knowledge, no matter how improbable that explanation may appear."

***Facts Beyond the Scope of Examination***

If the defendant has limited his or her testimony to a specific factual issue, it is error for the prosecutor to comment, or the trial court to instruct, on his or her failure to explain or deny other evidence against him or her that is beyond the scope of this testimony. (*People v. Tealer* (1975) 48 Cal.App.3d 598, 604–607 [122 Cal.Rptr. 144].)

### 370. Motive

The People are not required to prove **that** the defendant had a motive **to** **(commit (any of the crimes/the crime) charged/ [or] \_\_\_\_\_ <insert conduct alleged in support of sentencing enhancement or special circumstance>).** In reaching your verdict you may, however, consider whether the defendant had a motive.

Having a motive may be a factor tending to show **(that the defendant is guilty/ [or] that an (allegation/ [or] special circumstance) is true).** Not having a motive may be a factor tending to show the defendant is not guilty/ **[or] that an (allegation/ [or] special circumstance) is not true).**

New January 2006 [insert date of council approval]

### BENCH NOTES

#### *Instructional Duty*

The court does not have a sua sponte duty to instruct on motive. (*People v. Romo* (1975) 14 Cal.3d 189, 196 [121 Cal.Rptr. 111, 534 P.2d 1015] [not error to refuse instruction on motive].)

**Do not** give this instruction if motive is an element of ~~the~~ all of the crimes charged. (See, e.g., CALCRIM No. 1122, *Annoying or Molesting a Child*.)

Modify this instruction as needed if motive is an element of some, but not all, of the crimes or special circumstances charged or enhancements alleged. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317].)

### AUTHORITY

- Instructional Requirements ▶ *People v. Romo* (1975) 14 Cal.3d 189, 195–196 [121 Cal.Rptr. 111, 534 P.2d 1015]; *People v. Young* (1970) 9 Cal.App.3d 106, 110 [87 Cal.Rptr. 767].
- Jury May Consider Motive ▶ *People v. Brown* (1900) 130 Cal. 591, 594 [62 P. 1072]; *People v. Gonzales* (1948) 87 Cal.App.2d 867, 877–878 [198 P.2d 81].
- Proof of Presence or Absence of Motive Not Required ▶ *People v. Daly* (1992) 8 Cal.App.4th 47, 59 [10 Cal.Rptr.2d 21]; *People v. Scheer* (1998) 68 Cal.App.4th 1009, 1017–1018 [80 Cal.Rptr.2d 676].

- This Instruction Upheld ▶ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1192–1193 [67 Cal.Rptr.3d 871].

### ***Secondary Sources***

- 1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Elements, § 4.
- 1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, § 249.
- 1 Witkin, California Evidence (4th ed. 2000) Circumstantial Evidence, § 119.
- 4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.03[2][c] (Matthew Bender).

## **RELATED ISSUES**

### ***Entrapment Defense***

The court should not instruct on motive if the defendant admits his guilt for the substantive crime and presents an entrapment defense, because in that instance his or her commission of the crime would not be an issue and motive would be irrelevant. (See *People v. Martinez* (1984) 157 Cal.App.3d 660, 669 [203 Cal.Rptr. 833]; *People v. Lee* (1990) 219 Cal.App.3d 829, 841 [268 Cal.Rptr. 595].)

### ***No Conflict With Other Instructions***

Motive, intent, and malice are separate and distinct mental states. Giving a motive instruction does not conflict with intent and malice instructions. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 503–504 [117 Cal.Rptr.2d 45, 40 P.3d 754] [motive describes the reason a person chooses to commit a crime]; *People v. Snead* (1993) 20 Cal.App.4th 1088, 1098 [24 Cal.Rptr.2d 922].) Similarly, a motive instruction that focuses on guilt does not conflict with a special circumstance instruction, which the jury is directed to find true or not true. (*People v. Heishman* (1988) 45 Cal.3d 147, 178 [246 Cal.Rptr. 673, 753 P.2d 629] [defendant argued motive to prevent victim from testifying was at core of special circumstance].) A torture murder instruction that requires an intent to cause cruel pain or suffering for the purpose of revenge, extortion, or any sadistic purpose also does not conflict with the motive instruction. The torture murder instruction does not elevate motive to the status of an element of the crime. It simply makes explicit the treatment of motive as an element of proof in torture murder cases. (*People v. Lynn* (1984) 159 Cal.App.3d 715, 727–728 [206 Cal.Rptr. 181].)

**523. First Degree Murder: Hate Crime (Pen. Code, § 190.03)**

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If you find the defendant guilty of first degree murder [as charged in Count \_\_\_], you must then decide whether the People have proved the additional allegation that the murder was a hate crime.

To prove this allegation the People must prove that the defendant committed the murder, in whole or in part, because of the deceased person's actual or perceived (disability[,]/[or] gender[,]/[or] nationality[,]/[or] race or ethnicity[,]/[or] religion[,]/[or] sexual orientation[,]/ [or] association with a person or group with (this/one or more of these) actual or perceived characteristic[s]).

The defendant acted, *in whole or in part, because of* the actual or perceived characteristic[s] of the deceased person if:

1. The defendant was biased against the other person based on the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

**AND**

2. The bias motivation caused the defendant to commit the alleged murder.

If you find that the defendant had more than one reason to commit the alleged murder, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.

[The term *disability* is explained in Instruction 1353, to which you should refer.]

[*Gender*, as used here, means sex and includes a person's gender identity and gender related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.]

[*Nationality* includes citizenship, country of origin, and national origin.]

[*Race or ethnicity* includes ancestry, color, and ethnic background.]

[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]

[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]

[*Association with a person or group with (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,]/ identification with[,]/ [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,]/ group[,]/ family[,]/ community center[,]/ educational facility[,]/ office[,]/ meeting hall[,]/ place of worship[,]/ private institution[,]/ public agency[,]/ library[,]/ [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find this allegation has not been proved.

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New January 2006 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the sentencing enhancement. (See *People v. Marshall* (2000) 83 Cal.App.4th 186, 193–195 [99 Cal.Rptr.2d 441]; *Apprendi v. New Jersey* (2000) 530 U.S. 466, 475–476, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].)

This statute was substantially revised, effective January 1, 2005. Prior to that time, the statute was limited to murder committed because of the decedent’s disability, gender, or sexual orientation.

Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this enhancement. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crime: Disability Defined*.

## AUTHORITY

- Murder That is a Hate Crime ▶ Pen. Code, § 190.03(a).
- Hate Crime Defined ▶ Pen. Code, § 422.55.
- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, §12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c) & 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).
- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).

### ***Secondary Sources***

3 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Punishment, § 459.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.01[4][a][ii] (Matthew Bender).

**729. Special Circumstances: Murder Because of Race, Religion, or Nationality (Pen. Code, § 190.2(a)(16))**

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The defendant is charged with the special circumstance of murder committed because of the deceased's (race[,]/ color[,]/ religion[,]/ nationality[,]/ [or] country of origin) [in violation of Penal Code section 190.2(a)(16)].

To prove that this special circumstance is true, the People must prove that the defendant intended to kill because of the deceased person's (race[,]/ color[,]/ religion[,]/ nationality[,]/ [or] country of origin).

[If the defendant had more than one reason to (commit[,]/ participate in[,]/ [or] aid and abet) the murder, the deceased person's (race[,]/ color[,]/ religion[,]/ nationality[,]/ [or] country of origin) must have been a substantial factor motivating the defendant's conduct. A *substantial factor* is more than a trivial or remote factor, but it does not need to be the only factor that motivated the defendant.]

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New January 2006 *insert date of council approval*

**BENCH NOTES**

***Instructional Duty***

The court has a **sua sponte** duty to instruct on the elements of the special circumstance. (See *People v. Williams* (1997) 16 Cal.4th 635, 689 [66 Cal.Rptr.2d 573, 941 P.2d 752].)

Give the bracketed paragraph if there is evidence that the defendant had more than one reason to commit the murder. (*In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365].)

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this special circumstance. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

**AUTHORITY**

- Special Circumstance ▶ Pen. Code, § 190.2(a)(16).

- Special Circumstance Constitutional ▶ *People v. Sassounian* (1986) 182 Cal.App.3d 361, 413 [226 Cal.Rptr. 880]; *People v. Talamantez* (1985) 169 Cal.App.3d 443, 469 [215 Cal.Rptr. 542].
- “Because of” Defined ▶ Pen. Code, § 190.03(c); *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387]; *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365].

### ***Secondary Sources***

3 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Punishment, § 449.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 87, *Death Penalty*, §§ 87.13[16], 87.14 (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.01[4][a][ii] (Matthew Bender).

**902. Assault on Military Personnel Pen. Code, §§ 240, 241.8)**

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**The defendant is charged [in Count \_\_] with assault on a member of the United States Armed Forces [in violation of Penal Code section 241.8].**

**To prove that the defendant is guilty of this crime, the People must prove that:**

- 1. The defendant did an act that by its nature would directly and probably result in the application of force to a person;**
- 2. The defendant did that act willfully;**
- 3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act would directly, naturally, and probably result in the application of force to someone;**
- 4. When the defendant acted, (he/she) had the present ability to apply force to a person;**
- 5. The person assaulted was a member of the United States Armed Forces at the time of the assault;**

**[AND]**

- 6. The defendant knew the other person was a member of the United States Armed Forces and assaulted the other person because of that person's service(;/.)**

*<Give element 7 when instructing on self-defense or defense of another.>*

**[AND]**

- 7. The defendant did not act (in self-defense/ [or] in defense of someone else).]**

**Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.**

The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by the defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

A \_\_\_\_\_ <insert description, e.g., "private in the United States Army"> is a member of the United States Armed Forces.

A person commits an assault *because of someone's service in the Armed Forces* if:

1. That person is biased against the assaulted person based on the assaulted person's military service;

AND

2. That bias caused the person to commit the alleged assault.

If the defendant had more than one reason to commit the alleged assault, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the assault.

[Voluntary intoxication is not a defense to assault.]

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New January 2006 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on that defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

The jury must determine whether the alleged victim is a member of the United States Armed Forces. (See *People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of member of the armed forces. However, the court may not instruct the jury that the alleged victim was a member of the armed forces as a matter of law. (*Ibid.*)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of “attempted assault” in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)

## AUTHORITY

- Elements ▶ Pen. Code, §§ 240, 241.8.
- Willfully Defined ▶ Pen. Code, § 7, subd. 1; *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Mental State for Assault ▶ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].

### *Secondary Sources*

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, § 65.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.11 (Matthew Bender).

### **LESSER INCLUDED OFFENSES**

- Simple Assault ▶ Pen. Code, § 240.

**904. Assault on School Employee (Pen. Code, §§ 240, 241.6)**

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The defendant is charged [in Count \_\_\_] with assault on a school employee [in violation of Penal Code section 241.6].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant did an act that by its nature would directly and probably result in the application of force to a person;
2. The defendant did that act willfully;
3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;
4. When the defendant acted, (he/she) had the present ability to apply force to a person;
5. When the defendant acted, (he/she) knew, or reasonably should have known, that the person assaulted was a school employee [and that (he/she) was performing (his/her) duties as a school employee];

[AND]

6. (When the defendant acted, the person assaulted was performing (his/her) duties[,]/ [or] (The/the) defendant acted in retaliation for something the school employee had done in the course of (his/her) duties)(;/.)

<Give element 7 when instructing on self-defense or defense of another.>

[AND]

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

A *school employee* is any person employed as a permanent or probationary certificated or classified employee of a school district on a part-time or full-time basis, including a substitute teacher, student teacher, or school board member.

[It is not a defense that an assault took place off campus or outside of school hours.]

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*New January 2006*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

If the sole motivation alleged for the assault is retaliation, **do not** give CALCRIM No. 370, *Motive*, do not give the bracketed clause in element 5, and give only the second option in element 6. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of “attempted assault” in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

### **AUTHORITY**

- Elements ▶ Pen. Code, §§ 240, 241.6.
- Willful Defined ▶ Pen. Code, § 7, subd. 1; *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Mental State for Assault ▶ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].

### ***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, §§ 20, 73.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.02 (Matthew Bender).

**947. Simple Battery on Military Personnel (Pen. Code, §§ 242, 243.10)**

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**The defendant is charged [in Count \_\_] with battery against a member of the United States Armed Forces [in violation of Penal Code section 243.10].**

**To prove that the defendant is guilty of this crime, the People must prove that:**

- 1. The defendant willfully [and unlawfully] touched \_\_\_\_\_ <insert name of complaining witness> in a harmful or offensive manner;**
- 2. \_\_\_\_\_ <insert name of complaining witness> was a member of the United States Armed Forces at the time of the touching;**

**[AND]**

- 3. The defendant knew \_\_\_\_\_ <insert name of complaining witness> was a member of the United States Armed Forces and touched \_\_\_\_\_ <insert name of complaining witness> in a harmful or offensive manner because of \_\_\_\_\_ <insert name of complaining witness>'s service(;/.)**

*<Give element 4 when instructing on self-defense or defense of another.>*

**[AND]**

- 4. The defendant did not act (in self-defense/ [or] in defense of someone else).]**

**Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.**

**The slightest touching can be enough to commit a battery if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.**

**[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]**

A \_\_\_\_\_ <insert description, e.g., “private in the United States Army”> is a member of the United States Armed Forces.

A person commits a battery *because of someone’s service in the armed forces* if:

1. He or she is biased against the person battered based on that person’s military service;

AND

2. That bias caused him or her to commit the alleged battery.

If the defendant had more than one reason to commit the alleged battery, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the battery.

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New January 2006 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 3 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

Give the bracketed paragraph on indirect touching if that is an issue.

The jury must determine whether the alleged victim is a member of the armed forces. (See *People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of “member of the armed forces.” However, the court may not instruct the jury that the alleged victim was a member of the armed forces as a matter of law. (*Ibid.*)

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

## AUTHORITY

- Elements ▶ Pen. Code, §§ 242, 243.10.
- Willfully Defined ▶ Pen. Code, § 7, subd. 1; *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].

### *Secondary Sources*

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, § 19.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.12 (Matthew Bender).

## LESSER INCLUDED OFFENSES

- Assault ▶ Pen. Code, § 240.
- Simple Battery ▶ Pen. Code, §§ 242, 243(a).

## RELATED ISSUES

See the Related Issues section of CALCRIM No. 960, *Simple Battery*.

**1350. Hate Crime: Misdemeanor Interference With Civil Rights by Force (Pen. Code, § 422.6(a))**

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The defendant is charged [in Count \_\_] with interfering with another person's civil rights by the use of force [in violation of Penal Code section 422.6(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant used force to willfully interfere with[, or injure, intimidate, or oppress,] another person's free exercise or enjoyment of the right [or privilege] to \_\_\_\_\_ <describe the right allegedly infringed, e.g., "be free from violence or bodily harm">, established by the law or Constitution of California or the United States;
2. The defendant did so in whole or in part because of the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

AND

3. The defendant intended to interfere with the other person's legally protected right [or privilege].

Someone commits an act *willfully* when he or she does it willingly or on purpose.

The defendant acted *in whole or in part because of* the actual or perceived characteristic[s] of the other person if:

1. The defendant was biased against the other person based on the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

AND

2. The bias motivation caused the defendant to commit the alleged acts.

If you find that the defendant had more than one reason to commit the alleged acts, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.

[The term *disability* is explained in Instruction 1353, to which you should refer.]

[*Gender*, as used here, means sex and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.]

[*Nationality* includes citizenship, country of origin, and national origin.]

[*Race or ethnicity* includes ancestry, color, and ethnic background.]

[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]

[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]

[*Association with a person or group having (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,]/ [or] identification with[,]/ [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,]/ [or] group[,]/ [or] family[,]/ [or] community center[,]/ [or] educational facility[,]/ [or] office[,]/ [or] meeting hall[,]/ [or] place of worship[,]/ [or] private institution[,]/ [or] public agency[,]/ [or] library[,]/ [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]

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New January 2006 *[insert date of council approval](#)*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. This statute was substantially revised, effective January 1, 2005.

If the prosecution is based on the defendant's speech alone, do not give this instruction. (Pen. Code, § 422.6(c); *In re M.S.* (1995) 10 Cal.4th 698, 711–716 [42

Cal.Rptr.2d 355, 896 P.2d 1365].) Give CALCRIM No. 1351, *Hate Crime: Misdemeanor Interference With Civil Rights by Threat*.

In element 1, insert a description of the specific right or rights allegedly infringed, for example, the right to be free from violence or the threat of violence or the right to be protected from bodily harm. (See Civil Code, §§ 43, 51.7; *People v. Lashley* (1991) 1 Cal.App.4th 938, 950–951 [2 Cal.Rptr.2d 629]; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].)

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crime: Disability Defined*.

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

## AUTHORITY

- Elements ▶ Pen. Code, § 422.6(a).
- Willfully Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Hate Crime Defined ▶ Pen. Code, § 422.55.
- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, § 12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c), 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).
- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).
- Specific Intent to Deprive Individual of Protected Right Required ▶ *In re M.S.* (1995) 10 Cal.4th 698, 713 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Lashley* (1991) 1 Cal.App.4th 938, 947–949 [2 Cal.Rptr.2d 629].

- Not Limited to “Significant Constitutional Rights.” ▶ *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].
- Statute Constitutional ▶ *In re M.S.* (1995) 10 Cal.4th 698, 715–717, 724 [42 Cal.Rptr.2d 355, 896 P.2d 1365].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 410, 411.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

## **RELATED ISSUES**

### *Defendant Need Not Know He or She Is Violating the Law*

“ ‘[S]pecific intent’ under the statute does not require an actual awareness on the part of the defendant that he is violating another’s constitutional rights. It is enough that he engages in activity that interferes with rights clearly and specifically protected by the laws of the United States.” (*People v. Lashley* (1991) 1 Cal.App.4th 938, 948 [2 Cal.Rptr.2d 629].) “It is sufficient if the right is clearly defined and that the defendant intended to invade interests protected by constitutional or statutory authority.” (*Id.* at p. 949.)

### *Penal Code Section 654*

In *In re M.S.* (1995) 10 Cal.4th 698, 727 [42 Cal.Rptr.2d 355, 896 P.2d 1365], the court rejected the argument that Penal Code section 654 does not apply to convictions under Penal Code section 422.6. In 2004, the Legislature amended the statute to add subdivision (d), which specifically states that Penal Code section 654 applies to convictions under Penal Code section 422.6.

**1351. Hate Crime: Misdemeanor Interference With Civil Rights by Threat (Pen. Code, § 422.6(a) & (c))**

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The defendant is charged [in Count \_\_] with interfering with another person's civil rights by threatening violence [in violation of Penal Code section 422.6].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant threatened physical violence against a specific person [or a specific group of people];
2. The threat would have caused a reasonable person to be afraid because the defendant appeared able to carry out the threat;
3. The defendant used the threat to willfully interfere with[, or injure, intimidate, or oppress,] another person's free exercise or enjoyment of the right [or privilege] to \_\_\_\_\_ <describe the right allegedly infringed, e.g., "be free from violence or bodily harm">, established by the law or Constitution of California or the United States;
4. The defendant did so in whole or in part because of the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

**AND**

5. The defendant intended to interfere with the other person's legally protected right [or privilege].

Someone commits an act *willfully* when he or she does it willingly or on purpose.

The defendant acted *in whole or in part because of* the actual or perceived characteristic[s] of the other person if:

1. The defendant was biased against the other person based on the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or]

**nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);**

**AND**

- 2. The bias motivation caused the defendant to commit the alleged acts.**

**If you find that the defendant had more than one reason to commit the alleged acts, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.**

**[The term *disability* is explained in Instruction 1353, to which you should refer.]**

**[*Gender*, as used here, means sex and includes a person’s gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.]**

**[*Nationality* includes citizenship, country of origin, and national origin.]**

**[*Race or ethnicity* includes ancestry, color, and ethnic background.]**

**[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]**

**[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]**

**[*Association with a person or group having (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,]/ [or] identification with[,]/ [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,]/ [or] group[,]/ [or] family[,]/ [or] community center[,]/ [or] educational facility[,]/ [or] office[,]/ [or] meeting hall[,]/ [or] place of worship[,]/ [or] private institution[,]/ [or] public agency[,]/ [or] library[,]/ [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]**

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**New January 2006 *[insert date of council approval]***

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. This statute was substantially revised, effective January 1, 2005.

Give this instruction if the prosecution is based on the defendant's speech alone. (Pen. Code, § 422.6(c); *In re M.S.* (1995) 10 Cal.4th 698, 711–716 [42 Cal.Rptr.2d 355, 896 P.2d 1365].)

In element 3, insert a description of the specific right or rights allegedly infringed, for example, the right to be free from violence or the threat of violence or the right to be protected from bodily harm. (See Civil Code, §§ 43, 51.7; *People v. Lashley* (1991) 1 Cal.App.4th 938, 950–951 [2 Cal.Rptr.2d 629]; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].)

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crime: Disability Defined*.

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

## AUTHORITY

- Elements ▶ Pen. Code, § 422.6(a) & (c).
- Willfully Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Hate Crime Defined ▶ Pen. Code, § 422.55.
- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, § 12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c), 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).

- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).
- Specific Intent to Deprive Individual of Protected Right Required ▶ *In re M.S.* (1995) 10 Cal.4th 698, 713 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Lashley* (1991) 1 Cal.App.4th 938, 947–949 [2 Cal.Rptr.2d 629].
- Requirements for Threat of Violence ▶ Pen. Code, § 422.6(c); *In re M.S.* (1995) 10 Cal.4th 698, 711–716 [42 Cal.Rptr.2d 355, 896 P.2d 1365].
- Not Limited to “Significant Constitutional Rights.” ▶ *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].
- Statute Constitutional ▶ *In re M.S.* (1995) 10 Cal.4th 698, 715–717, 724 [42 Cal.Rptr.2d 355, 896 P.2d 1365].

### *Secondary Sources*

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 410, 411.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

### **RELATED ISSUES**

See the Related Issues section of CALCRIM No. 1350, *Hate Crime: Misdemeanor Interference With Civil Rights by Force*.

**1352. Hate Crime: Misdemeanor Interference With Civil Rights by Damaging Property (Pen. Code, § 422.6(b))**

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The defendant is charged [in Count \_\_] with interfering with another person's civil rights by damaging property [in violation of Penal Code section 422.6(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (defaced[,]/ [or] damaged[,]/ [or] destroyed) (real/ [or] personal) property (owned[,]/ [or] used[,]/ [or] possessed[,]/ [or] occupied) by another person;
2. The defendant knew that (he/she) was (defacing[,]/ [or] damaging[,]/ [or] destroying) property that was (owned[,]/ [or] used[,]/ [or] possessed[,]/ [or] occupied) by that person;
3. The defendant did so for the purpose of interfering with [or intimidating] that person's free exercise or enjoyment of the right [or privilege] to \_\_\_\_\_ <describe the right allegedly infringed, e.g., "be free from violence or bodily harm">, established by the law or Constitution of California or the United States;
4. The defendant did so in whole or in part because of the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s];

AND

5. The defendant intended to interfere with the other person's legally protected right [or privilege].

The defendant acted *in whole or in part because of* the actual or perceived characteristic[s] of the other person if:

1. The defendant was biased against the other person based on the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual

orientation[,] [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

AND

2. The bias motivation caused the defendant to commit the alleged acts.

If you find that the defendant had more than one reason to commit the alleged acts, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.

[The term *disability* is explained in Instruction 1353, to which you should refer.]

[*Gender*, as used here, means sex and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.]

[*Nationality* includes citizenship, country of origin, and national origin.]

[*Race or ethnicity* includes ancestry, color, and ethnic background.]

[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]

[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]

[*Association with a person or group having (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,] [or] identification with[,] [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,] [or] group[,] [or] family[,] [or] community center[,] [or] educational facility[,] [or] office[,] [or] meeting hall[,] [or] place of worship[,] [or] private institution[,] [or] public agency[,] [or] library[,] [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]

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New January 2006 [\[insert date of council approval\]](#)

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. This statute was substantially revised, effective January 1, 2005.

In element 3, insert a description of the specific right or rights allegedly infringed, for example, the right to be free from violence or the threat of violence or the right to be protected from bodily harm. (See Civil Code, §§ 43, 51.7; *People v. Lashley* (1991) 1 Cal.App.4th 938, 950–951 [2 Cal.Rptr.2d 629]; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].)

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crime: Disability Defined*.

[Do not give CALCRIM No. 370, \*Motive\*, with this instruction because motive is an element of this crime. \(See \*People v. Valenti\* \(2016\) 243 Cal.App.4th 1140, 1165 \[197 Cal.Rptr.3d 317\]; \*People v. Maurer\* \(1995\) 32 Cal.App.4th 1121, 1126–1127 \[38 Cal.Rptr.2d 335\].\)](#)

## AUTHORITY

- Elements ▶ Pen. Code, § 422.6(b).
- Hate Crime Defined ▶ Pen. Code, § 422.55.
- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, § 12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c), 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).
- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).
- Specific Intent to Deprive Individual of Protected Right Required ▶ *In re M.S.* (1995) 10 Cal.4th 698, 713 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Lashley* (1991) 1 Cal.App.4th 938, 947–949 [2 Cal.Rptr.2d 629].

- Not Limited to “Significant Constitutional Rights” ▶ *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].
- Statute Constitutional ▶ *In re M.S.* (1995) 10 Cal.4th 698, 715–717, 724 [42 Cal.Rptr.2d 355, 896 P.2d 1365].
- Victim Need Not Own Property ▶ *In re Michael M.* (2001) 86 Cal.App.4th 718, 724–726 [104 Cal.Rptr.2d 10].

### *Secondary Sources*

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 410, 411.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

## **RELATED ISSUES**

### *Target of Intimidation Need Not Own Property*

“[T]he phrase ‘property of any other person’ in section 422.6, subdivision (b) does not require that the victim own the property. As long as the property is regularly and openly used, possessed, or occupied by the victim so that it is readily identifiable with him or her, it falls within the statutory scope.” (*In re Michael M.* (2001) 86 Cal.App.4th 718, 724–726 [104 Cal.Rptr.2d 10] [classroom was the “property of” the students whose class met there].)

See the Related Issues section of CALCRIM No. 1350, *Hate Crime: Misdemeanor Interference With Civil Rights by Force*.

### 1354. Hate Crime Allegation: Felony (Pen. Code, § 422.75(a)–(c))

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If you find the defendant guilty of the crime[s] charged in Count[s] \_\_[, ] [or of attempting to commit (that/those) crime[s]] [ or the lesser crime[s] of \_\_\_\_\_ <insert name[s] of alleged lesser offense[s]>], you must then decide whether[, for each crime,] the People have proved the additional allegation that the crime[s] committed by the defendant (was a/were) hate crime[s]. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation [for each crime] the People must prove that the defendant committed that crime in whole or in part because of the alleged victim's actual or perceived (disability[,]/ gender[,]/ nationality[,]/ race or ethnicity[,]/ religion[,]/ sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]).

As used here, *victim* includes, but is not limited to, a (person[,]/ [or] individual[,]/ [or] family[,]/ [or] group[,]/ [or] community center[,]/ [or] educational facility[,]/ [or] entity[,]/ [or] office[,]/ [or] meeting hall[,]/ [or] place of worship[,]/ [or] private institution[,]/ [or] public agency[,]/ [or] library[,]/ [or] other victim or intended victim of the crime).

The defendant acted *in whole or in part because of* the actual or perceived characteristic[s] of the victim if:

1. The defendant was biased against the victim based on the victim's actual or perceived (disability[,]/ gender[,]/ nationality[,]/ race or ethnicity[,]/ religion[,]/ sexual orientation[,]/ [or] association with a person or group with (this/one or more of these) actual or perceived characteristic[s]);

AND

2. The bias motivation caused the defendant to commit the alleged acts.

If you find that the defendant had more than one reason to commit the alleged acts, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.

[The term *disability* is explained in Instruction 1353, to which you should refer.]

[*Gender*, as used here, means sex and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.]

[*Nationality* includes citizenship, country of origin, and national origin.]

[*Race or ethnicity* includes ancestry, color, and ethnic background.]

[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]

[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]

[*Association with a person or group having (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,]/ identification with[,]/ [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,]/ group[,]/ family[,]/ community center[,]/ educational facility[,]/ office[,]/ meeting hall[,]/ place of worship[,]/ private institution[,]/ public agency[,]/ library[,]/ [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]

[If you conclude that the People have proved that the crime[s] committed by the defendant (was a/were) hate crime[s], you must also decide whether the defendant voluntarily acted together with another person by either personally committing the crime or by aiding and abetting another person in committing the crime.]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

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New January 2006 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the sentencing enhancement. (*Apprendi v. New Jersey* (2000) 530 U.S. 466, 490 [120 S.Ct. 2348, 147 L.Ed.2d 435].) This statute was substantially revised, effective January 1, 2005.

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crimes: Disability Defined*.

If the prosecution alleges that the defendant acted in concert with another, pursuant to Penal Code section 422.75(b), give the bracketed sentence that begins with “If you conclude that the People have proved.” Give all relevant instructions on aiding and abetting. The jury must be provided with a verdict form on which it may indicate whether this factor has also been proved.

If the prosecution alleges that the defendant has a qualifying prior conviction under Penal Code section 422.75(d), then, in addition to this instruction, also give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

### *Related Instructions*

CALCRIM No. 1350, *Hate Crime: Misdemeanor Interference With Civil Rights by Force*.

CALCRIM No. 1351, *Hate Crime: Misdemeanor Interference With Civil Rights by Threat*.

CALCRIM No. 1352, *Hate Crime: Misdemeanor Interference With Civil Rights by Damage to Property*.

CALCRIM No. 1355, *Hate Crime Allegation: Misdemeanor*.

## AUTHORITY

- Enhancement ▶ Pen. Code, § 422.75(a)–(c).
- Hate Crime Defined ▶ Pen. Code, § 422.55.

- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].
- Victim Defined ▶ Pen. Code, § 422.56(i).
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, §12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c) & 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).
- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).
- Enhancement, Not Substantive Offense ▶ See *People v. Wallace* (2003) 109 Cal.App.4th 1699, 1702 [1 Cal.Rptr.3d 324].
- Aiding and Abetting ▶ *People v. Beeman* (1984) 35 Cal.3d 547, 560–561 [199 Cal.Rptr. 60, 674 P.2d 1318].
- Acting in Concert ▶ See *People v. Calimee* (1975) 49 Cal.App.3d 337, 341 [122 Cal.Rptr. 658] [construing sodomy-in-concert statute]; *People v. Lopez* (1981) 116 Cal.App.3d 882, 886 [172 Cal.Rptr. 374] [construing rape-in-concert statute].
- No Specific Intent Required ▶ *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 740–741 [42 Cal.Rptr.2d 377, 896 P.2d 1387].

### ***Secondary Sources***

3 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Punishment, § 305.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

### 1355. Hate Crime Allegation: Misdemeanor (Pen. Code, § 422.7)

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If you find the defendant guilty of \_\_\_\_\_ *<insert offense[s]>* [as charged in Count[s] \_\_\_], you must then decide whether the People have proved the additional allegation that the crime[s] committed by the defendant (was a/were) hate crime[s]. [You must decide whether the People have proved this allegation for each crime and return a separate finding for each crime.]

To prove this allegation [for each crime], the People must prove that:

1. When committing that crime, the defendant intended to interfere with [or intimidate] another person's free exercise or enjoyment of the right [or privilege] to \_\_\_\_\_ *<describe the right raised by the evidence>*, established by the law or Constitution of California or the United States;

[AND]

2. The defendant acted in whole or in part because of the other person's actual or perceived (disability[,]/ gender[,]/ nationality[,]/ race or ethnicity[,]/ religion[,]/ sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s])(;/.)

[AND]

*<Alternative 3A—caused physical injury>*

- [3. When committing that crime, the defendant caused an actual physical injury or had the ability at that time to cause a violent injury.]

*<Alternative 3B—caused property damage>*

- [3. The defendant caused property damage in excess of \$950.]

The defendant acted *in whole or in part because of* the actual or perceived characteristic[s] of the other person if:

1. The defendant was biased against the other person based on the other person's actual or perceived (disability[,]/ [or] gender[,]/ [or] nationality[,]/ [or] race or ethnicity[,]/ [or] religion[,]/ [or] sexual orientation[,]/ [or] association with a person or group having (this/one or more of these) actual or perceived characteristic[s]);

AND

2. The bias motivation caused the defendant to commit the alleged acts.

If you find that the defendant had more than one reason to commit the alleged acts, the bias described here must have been a substantial motivating factor. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that motivated the conduct.

[The term *disability* is explained in Instruction 1353, to which you should refer.]

[*Gender*, as used here, means sex and includes a person's gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.]

[*Nationality* includes citizenship, country of origin, and national origin.]

[*Race or ethnicity* includes ancestry, color, and ethnic background.]

[*Religion*, as used here, includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.]

[*Sexual orientation* means heterosexuality, homosexuality, or bisexuality.]

[*Association with a person or group having (this/one or more of these) actual or perceived characteristic[s]* includes (advocacy for[,]/ identification with[,]/ [or] being on the ground owned or rented by[, or adjacent to,]) a (person[,]/ group[,]/ family[,]/ community center[,]/ educational facility[,]/ office[,]/ meeting hall[,]/ place of worship[,]/ private institution[,]/ public agency[,]/ library[,]/ [or] other entity) that has, or is identified with people who have, (that/one or more of those) characteristic[s].]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

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New January 2006; Revised February 2012 *insert date of council approval*

## BENCH NOTES

### ***Instructional Duty***

The court has a **sua sponte** duty to give an instruction defining the elements of the enhancement. (*People v. Wallace* (2003) 109 Cal.App.4th 1699, 1702 [1 Cal.Rptr.3d 324] [statute defines enhancement, not separate offense].) This enhancement makes a crime “committed against the person or property of another” that would otherwise be a misdemeanor into a misdemeanor-felony “wobbler.” (Pen. Code, § 422.7.) This statute was substantially revised, effective January 1, 2005.

In element 1, insert a description of the specific right or rights allegedly infringed, for example, the right to be free from violence or the threat of violence or the right to be protected from bodily harm. (See Civil Code, §§ 43 & 51.7; *People v. Lashley* (1991) 1 Cal.App.4th 938, 950–951 [2 Cal.Rptr.2d 629]; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1277–1278 [40 Cal.Rptr.2d 793].)

Give element 3A if the prosecution alleges that the crime was committed “against a person” and caused injury or included “the present ability to commit a violent injury.” (Pen. Code, § 422.7(a)). Give element 3B if the prosecution alleges property damage exceeding \$950. (Pen. Code, § 422.7(b).) If the prosecution alleges that the defendant has a qualifying prior conviction under Penal Code section 422.7(c), then, in addition to this instruction, also give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.

Give all relevant bracketed definitions. If the term “disability” is used, give CALCRIM No. 1353, *Hate Crimes: Disability Defined*.

**Do not give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of this crime. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr.3d 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)**

### ***Related Instructions***

CALCRIM No. 1350, *Hate Crime: Misdemeanor Interference With Civil Rights by Force*.

CALCRIM No. 1351, *Hate Crime: Misdemeanor Interference With Civil Rights by Threat*.

*CALCRIM No. 1352, Hate Crime: Misdemeanor Interference With Civil Rights  
by Damaging Property.*

*CALCRIM No. 1354, Hate Crime Allegation: Felony.*

## AUTHORITY

- Enhancement ▶ Pen. Code, § 422.7.
- Hate Crime Defined ▶ Pen. Code, § 422.55.
- “In Whole or in Part Because of” Defined ▶ Pen. Code, § 422.56(d); *In re M.S.* (1995) 10 Cal.4th 698, 719–720 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Superior Court (Aishman)* (1995) 10 Cal.4th 735, 741 [896 P.2d 1387].
- Disability Defined ▶ Pen. Code, § 422.56(b); Gov. Code, §12926(i)–(l).
- Gender Defined ▶ Pen. Code, §§ 422.56(c) & 422.57.
- Nationality Defined ▶ Pen. Code, § 422.56(e).
- Race or Ethnicity Defined ▶ Pen. Code, § 422.56(f).
- Religion Defined ▶ Pen. Code, § 422.56(g).
- Sexual Orientation Defined ▶ Pen. Code, § 422.56(h).
- Association With Defined ▶ Pen. Code, § 422.56(a).
- Enhancement, Not Substantive Offense ▶ *People v. Wallace* (2003) 109 Cal.App.4th 1699, 1702 [1 Cal.Rptr.3d 324].
- Intent to Deprive Individual of Protected Rights ▶ *In re M.S.* (1995) 10 Cal.4th 698, 713 [42 Cal.Rptr.2d 355, 896 P.2d 1365]; *People v. Lashley* (1991) 1 Cal.App.4th 938, 947–949 [2 Cal.Rptr.2d 629]; *People v. MacKenzie* (1995) 34 Cal.App.4th 1256, 1268 [40 Cal.Rptr.2d 793]; *In re Joshua H.* (1993) 13 Cal.App.4th 1734, 1742 [17 Cal.Rptr.2d 291].

### *Secondary Sources*

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 410, 411.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.44 (Matthew Bender).

## LESSER INCLUDED OFFENSES

The underlying misdemeanor, and the attempt of the underlying misdemeanor (see Pen. Code, § 664), are lesser included offenses of a violation of Penal Code section 422.7.

**1356–1399. Reserved for Future Use**

## 522. Provocation: Effect on Degree of Murder

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**Provocation may reduce a murder from first degree to second degree [and may reduce a murder to manslaughter]. The weight and significance of the provocation, if any, are for you to decide.**

**If you conclude that the defendant committed murder but was provoked, consider the provocation in deciding whether the crime was first or second degree murder. [Also, consider the provocation in deciding whether the defendant committed murder or manslaughter.]**

**[Provocation does not apply to a prosecution under a theory of felony murder.]**

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*New January 2006; Revised April 2011 [\[insert date of council approval\]](#)*

### BENCH NOTES

#### ***Instructional Duty***

Provocation may reduce murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7] [provocation raised reasonable doubt about premeditation or deliberation, “leaving the homicide as murder of the second degree; i.e., an unlawful killing perpetrated with malice aforethought but without premeditation and deliberation”]; see also *People v. Cole* (2004) 33 Cal.4th 1158, 1211–1212 [17 Cal.Rptr.3d 532, 95 P.3d 811] [court adequately instructed on relevance of provocation to whether defendant acted with intent to torture for torture murder].) There is, however, no sua sponte duty to instruct the jury on this issue. (*People v. Rogers* (2006) 39 Cal.4th 826, 877-880 [48 Cal.Rptr.3d 1, 141 P.3d 135].) *People v. Middleton* (1997) 52 Cal.App.4th 19, 31–33 [60 Cal.Rptr.2d 366], disapproved on other grounds in *People v. Gonzalez* (2003) 31 Cal.4th 745, 752 [3 Cal.Rptr.3d 676, 74 P.3d 771].) This is a pinpoint instruction, to be given on request.

This instruction may be given after CALCRIM No. 521, *First Degree Murder*.

If the court will be instructing on voluntary manslaughter, give both bracketed portions on manslaughter.

If the court will be instructing on felony murder, give the bracketed sentence stating that provocation does not apply to felony murder.

## AUTHORITY

- Provocation Reduces From First to Second Degree. *People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7]; see also *People v. Cole* (2004) 33 Cal.4th 1158, 1211–1212 [17 Cal.Rptr.3d 532, 95 P.3d 811].
- Pinpoint Instruction. *People v. Rogers* (2006) 39 Cal.4th 826, 877–878].
- This Instruction Upheld. *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1333-1335 [107 Cal.Rptr.3d 915].

### *Secondary Sources*

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.16 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01, 142.02 (Matthew Bender).

**801. Mayhem (Pen. Code, § 203)**

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**The defendant is charged [in Count \_\_] with mayhem [in violation of Penal Code section 203].**

**To prove that the defendant is guilty of mayhem, the People must prove that the defendant unlawfully and maliciously:**

**[1. Removed a part of someone's body(;/.)]**

**[OR]**

**[2. Disabled or made useless a part of someone's body and the disability was more than slight or temporary(;/.)]**

**[OR]**

**[3. Permanently disfigured someone(;/.)]**

**[OR]**

**[4. Cut or disabled someone's tongue(;/.)]**

**[OR]**

**[5. Slit someone's (nose[, ]/ear[,]/ [or] lip) (;/.)]**

**[OR]**

**[6. Put out someone's eye or injured someone's eye in a way that so significantly reduced (his/her) ability to see that the eye was useless for the purpose of ordinary sight.]**

**Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else.**

**[A disfiguring injury may be *permanent* even if it can be repaired by medical procedures.]**

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*New January 2006; Revised August 2006, February 2014 [insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Whether the complaining witness suffered a serious bodily injury is a question for the jury to determine. If the defendant disputes that the injury suffered was a serious bodily injury, use the first bracketed paragraph. If the parties stipulate that the injury suffered was a serious bodily injury, use the second bracketed paragraph.

The last bracketed sentence may be given on request if there is evidence of a disfiguring injury that may be repaired by medical procedures. (See *People v. Hill* (1994) 23 Cal.App.4th 1566, 1574–1575 [28 Cal.Rptr.2d 783] [not error to instruct that injury may be permanent even though cosmetic repair may be medically feasible].)

## AUTHORITY

- Elements ▶ Pen. Code, § 203.
- Malicious Defined ▶ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- No Serious Bodily Injury Requirement ▶ *People v. Santana* (2013) 56 Cal.4th 999, 1010 [157 Cal.Rptr.3d 547, 301 P.3d 1157].
- Disabled ▶ See, e.g., *People v. Thomas* (1979) 96 Cal.App.3d 507, 512 [158 Cal.Rptr. 120] [serious ankle injury lasting over six months], overruled on other grounds in *People v. Kimble* (1988) 44 Cal.3d 480, 498 [244 Cal.Rptr. 148, 749 P.2d 803].
- General Intent Crime ▶ *People v. Villegas* (2001) 92 Cal.App.4th 1217, 1226 [113 Cal.Rptr.2d 1]; *People v. Sekona* (1994) 27 Cal.App.4th 443, 453 [32 Cal.Rptr.2d 606].
- Permanent Disfigurement ▶ *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571 [28 Cal.Rptr.2d 783]; *Goodman v. Superior Court* (1978) 84 Cal.App.3d 621, 624 [148 Cal.Rptr. 799]; see also *People v. Newble* (1981) 120 Cal.App.3d 444, 451 [174 Cal.Rptr. 637] [head is member of body for purposes of disfigurement].
- Put Out Eye ▶ *People v. Dennis* (1985) 169 Cal.App.3d 1135, 1138 [215 Cal.Rptr. 750]; *People v. Green* (1976) 59 Cal.App.3d 1, 3–4 [130 Cal.Rptr.

318] [addressing corrective lenses]; *People v. Nunes* (1920) 47 Cal.App. 346, 350 [190 P. 486].

- Slit Lip ▶ *People v. Caldwell* (1984) 153 Cal.App.3d 947, 952 [200 Cal.Rptr. 508] [defendant bit through victim’s lower lip].

### ***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, §§ 84–86.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.16 (Matthew Bender).

## **LESSER INCLUDED OFFENSES**

- Attempted Mayhem ▶ Pen. Code, §§ 203, 663.
- Assault ▶ Pen. Code, § 240; see *People v. De Angelis* (1979) 97 Cal.App.3d 837, 841 [159 Cal.Rptr. 111] [mayhem occurred during continuing assault].
- Battery ▶ Pen. Code, § 242.

Assault with force likely to produce great bodily injury (Pen. Code, § 245(a)(1)) is not a lesser included offense to mayhem. (*People v. Ausbie* (2004) 123 Cal.App.4th 855, 862–863 [20 Cal.Rptr.3d 371].)

[Battery with serious bodily injury is not a lesser included offense of mayhem under the statutory elements test. \*People v. Poisson\* \(2016\) 246 Cal.App.4th 121, 123-125 \[200 Cal.Rptr.3d 542\].](#)

## **RELATED ISSUES**

### ***Disfigurement***

Disfigurement constitutes mayhem “only when the injury is permanent.” (*Goodman v. Superior Court* (1978) 84 Cal.App.3d 621, 624 [148 Cal.Rptr. 799]; *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571 [28 Cal.Rptr.2d 783].) However, the “possibility that a victim’s disfigurement might be alleviated through reconstructive surgery is no bar to a finding of ‘permanent’ injury.” (*People v. Williams* (1996) 46 Cal.App.4th 1767, 1774 [54 Cal.Rptr.2d 521].) “We . . . reject [the] contention that evidence of medical alleviation may be used in a mayhem trial to prove an injury, permanent by its nature, may be corrected by medical procedures.” (*People v. Hill, supra*, 23 Cal.App.4th at p. 1574.) In addition, “[t]he

fact that [disfiguring injuries] are on a normally unexposed portion of [a] body does not render them any less significant.” (*People v. Keenan* (1991) 227 Cal.App.3d 26, 36 [277 Cal.Rptr. 687] [burns inflicted on victim’s breasts by a cigarette].)

***Imperfect Self-Defense Not Available***

“[A]part from the *McKelvy* lead opinion, there is no authority to support [the] claim that the mere use of the term ‘malicious’ in section 203 requires a court to instruct a jury that an actual but unreasonable belief will negate the malice required to convict for mayhem . . . . [Mayhem] involves a different requisite mental state and has no statutory history recognizing a malice aforethought element or the availability of the *Flannel* defense.” (*People v. Sekona* (1994) 27 Cal.App.4th 443, 457 [32 Cal.Rptr.2d 606]; contra, *People v. McKelvy* (1987) 194 Cal.App.3d 694, 702–704 [239 Cal.Rptr. 782] (lead opn. of Kline, P.J.).)

***Victim Must Be Alive***

A victim of mayhem must be alive at the time of the act. (*People v. Kraft* (2000) 23 Cal.4th 978, 1058 [99 Cal.Rptr.2d 1, 5 P.3d 68]; see *People v. Jentry* (1977) 69 Cal.App.3d 615, 629 [138 Cal.Rptr. 250].)

**802–809. Reserved for Future Use**

**830. Abuse of Elder or Dependent Adult Likely to Produce Great Bodily Harm or Death (Pen. Code, § 368(b)(1))**

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The defendant is charged [in Count \_\_] with (elder/dependent adult) abuse likely to produce great bodily harm or death [in violation of Penal Code section 368(b)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

*<Alternative A—inflicted pain>*

**[1. The defendant willfully inflicted unjustifiable physical pain or mental suffering on \_\_\_\_\_ *<insert name or description of elder or dependent adult>;***

*<Alternative B—caused or permitted to suffer pain>*

**[1. The defendant willfully caused or permitted \_\_\_\_\_ *<insert name or description of elder or dependent adult>* to suffer unjustifiable physical pain or mental suffering;]**

*<Alternative C—while having custody, caused or permitted to be injured>*

**[1. The defendant, while having care or custody of \_\_\_\_\_ *<insert name or description of elder or dependent adult>* willfully caused or permitted (his/her) person or health to be injured;]**

*<Alternative D—while having custody, caused or permitted to be placed in danger>*

**[1. The defendant, while having care or custody of \_\_\_\_\_ *<insert name or description of elder or dependent adult>* willfully caused or permitted (him/her) to be placed in a situation where (his/her) person or health was endangered;]**

**2. The defendant (inflicted suffering on \_\_\_\_\_ *<insert name or description of elder or dependent adult>*/ [or] caused or permitted \_\_\_\_\_ *<insert name of elder or dependent adult>* to (suffer/ [or] be injured/ [or] be endangered)) under circumstances or conditions likely to produce great bodily harm or death;**

3. \_\_\_\_\_ <insert name or description of elder or dependent adult>  
(is/was) (an elder/a dependent adult)(;/.)

[AND]

4. When the defendant acted, (he/she) knew or reasonably should have known that \_\_\_\_\_ <insert name or description of elder or dependent adult> was (an elder/a dependent adult)(;/.)

<Give element 5 when giving alternative 1B and it is alleged the defendant permitted the suffering.>

[AND]

- [5. The defendant had a legal duty to supervise and control the conduct of the person[s] who caused or inflicted unjustifiable physical pain or mental suffering on \_\_\_\_\_ <insert name or description of elder or dependent adult>, but failed to supervise or control that conduct(;/.)]

<Give element 6 when giving alternative 1B, 1C, or 1D.>

[AND]

6. The defendant was criminally negligent when (he/she) caused or permitted \_\_\_\_\_ <insert name or description of elder or dependent adult> to (suffer/ [or] be injured/ [or] be endangered).]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

*Great bodily ~~injury~~ harm* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

[An *elder* is someone who is at least 65 years old.]

[A *dependent adult* is someone who is between 18 and 64 years old and has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. [This definition includes an adult who has physical or developmental disabilities or whose physical or mental abilities have decreased because of age.] [A *dependent adult* is also someone between 18 and 64 years old who is an inpatient in a (health facility/psychiatric health facility/ [or] chemical dependency recovery hospital).]

[*Unjustifiable* physical pain or mental suffering is pain or suffering that is not reasonably necessary or is excessive under the circumstances.]

[A person who does not have care or custody of (an elder/a dependent adult) may still have a *legal duty to supervise and control the conduct of a third person* who can inflict abuse on the (elder/dependent adult) if the person has a special relationship with the third person. A special relationship is created, for example, when (1) a person takes charge of a third person whom (he/she) knows or should know is likely to cause bodily harm to others if not controlled, and (2) the person has the ability to control the third person's conduct.]

[*Criminal negligence* involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily harm;

AND

2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.]

[(An elder/A dependent adult) does not need to actually suffer great bodily harm. But if (an elder/a dependent adult) does suffer great bodily harm, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed the offense.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

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New January 2006 *[insert date of council approval](#)*

## BENCH NOTES

### *Instructional Duty*

The court has a *sua sponte* duty to give an instruction defining the elements of the crime.

Give element 1A if it is alleged that the defendant directly inflicted unjustifiable physical pain or mental suffering. Give element 1B if it is alleged that the defendant caused or permitted an elder or dependent adult to suffer. If it is alleged that the defendant had care or custody of an elder or dependent adult and that the defendant caused or permitted the elder's or dependent adult's person or health to be injured, give element 1C. Finally, give element 1D if it is alleged that the defendant had care or custody of an elder or dependent adult and that the defendant endangered the elder's or dependent adult's person or health. (See Pen. Code, § 368(b)(1).)

Give bracketed element 5 if it is alleged under element 1B that the defendant *permitted* an elder or dependent adult to suffer unjustifiable pain or mental suffering. (See *People v. Heitzman* (1994) 9 Cal.4th 189, 212 [37 Cal.Rptr.2d 236, 886 P.2d 1229].) If element 5 is given, also give the bracketed paragraph defining who has a “legal duty to control the conduct of a third person.”

Give bracketed element 6 regarding criminal negligence, and the bracketed definition of “criminally negligent,” if element 1B, 1C, or 1D is given alleging that the defendant committed any indirect act. (*People v. Manis* (1992) 10 Cal.App.4th 110, 114 [12 Cal.Rptr.2d 619], disapproved on other grounds by *People v. Heitzman* (1994) 9 Cal.4th 189, 212 [37 Cal.Rptr.2d 236, 886 P.2d 1229]; *People v. Superior Court (Holvey)* (1988) 205 Cal.App.3d 51, 60 [252 Cal.Rptr. 335], disapproved on other grounds by *People v. Heitzman* (1994) 9 Cal.4th 189, 212 [37 Cal.Rptr.2d 236, 886 P.2d 1229]; see *People v. Valdez* (2002) 27 Cal.4th 778, 788, 789 [118 Cal.Rptr.2d 3, 42 P.3d 511]; *People v. Peabody* (1975) 46 Cal.App.3d 43, 48–49 [119 Cal.Rptr. 780] [latter two cases in context of parallel child abuse statute].)

Give the bracketed definition of “elder” or “dependent adult” depending on the status of the alleged victim. (See Pen. Code, § 368(g) & (h).)

Give on request the bracketed definition of “unjustifiable” physical pain or mental suffering if there is a question about the necessity for or the degree of pain or suffering. (See *People v. Curtiss* (1931) 116 Cal.App. Supp. 771, 779–780 [300 P. 801].)

If there is a question whether an elder or dependent adult suffered great bodily harm, give on request the bracketed paragraph stating that a person “does not need to actually suffer great bodily harm.” (See *People v. Cortes* (1999) 71 Cal.App.4th 62, 80 [83 Cal.Rptr.2d 519]; *People v. Jaramillo* (1979) 98 Cal.App.3d 830, 835 [159 Cal.Rptr. 771] [in context of parallel child abuse statute].)

If a victim actually suffers great bodily injury or dies, the defendant's sentence may be enhanced based on the victim's age. (See Pen. Code, § 368(b)(2) & (3); see *People v. Adams* (2001) 93 Cal.App.4th 1192, 1198 [113 Cal.Rptr.2d 722].) Give CALCRIM No. 3162, *Great Bodily Injury: Age of Victim*, or any other appropriate instructions on enhancements. (See series 3100-3399.)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

## AUTHORITY

- Elements ▶ Pen. Code, § 368(b)(1).
- Great Bodily Harm or Injury Defined ▶ Pen. Code, §§ 368(b)(2), 12022.7(f); see *People v. Cortes* (1999) 71 Cal.App.4th 62, 80 [83 Cal.Rptr.2d 519] [in context of parallel child abuse statute].
- Sentence Enhancements ▶ Pen. Code, § 368(b)(2) & (3); see *People v. Adams* (2001) 93 Cal.App.4th 1192, 1198 [113 Cal.Rptr.2d 722].
- Willful Defined ▶ Pen. Code, § 7, subd. 1; see *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402]; *People v. Vargas* (1988) 204 Cal.App.3d 1455, 1462, 1468–1469 [251 Cal.Rptr. 904].
- Criminal Negligence Required for Indirect Conduct ▶ *People v. Manis* (1992) 10 Cal.App.4th 110, 114 [12 Cal.Rptr.2d 619]; *People v. Superior Court (Holvey)* (1988) 205 Cal.App.3d 51, 60 [252 Cal.Rptr. 335]; see *People v. Valdez* (2002) 27 Cal.4th 778, 788, 789 [118 Cal.Rptr.2d 3, 42 P.3d 511]; *People v. Peabody* (1975) 46 Cal.App.3d 43, 47, 48–49 [119 Cal.Rptr. 780] [in context of parallel child abuse statute].
- Duty to Control Conduct of Person Inflicting Abuse ▶ *People v. Heitzman* (1994) 9 Cal.4th 189, 212 [37 Cal.Rptr.2d 236, 886 P.2d 1229].
- General Criminal Intent Required for Direct Infliction of Pain or Suffering ▶ See *People v. Sargent* (1999) 19 Cal.4th 1206, 1224 [81 Cal.Rptr.2d 835, 970 P.2d 409] [in context of parallel child abuse statute].

## *Secondary Sources*

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 168–170.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, §§ 142.11[1][f], 142.13[5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure § 12:17 (The Rutter Group).

## COMMENTARY

Any violation of Penal Code section 368(b)(1) must be willful. (See *People v. Smith* (1984) 35 Cal.3d 798, 806 [201 Cal.Rptr. 311, 678 P.2d 886]; *People v. Cortes* (1999) 71 Cal.App.4th 62, 80 [83 Cal.Rptr.2d 519] [both in context of parallel child abuse statute]; but see *People v. Valdez* (2002) 27 Cal.4th 778, 789 [118 Cal.Rptr.2d 3, 42 P.3d 511] [the prong punishing a *direct infliction* of unjustifiable physical pain or mental suffering does not expressly require that the conduct be willful].) Following *Smith* and *Cortes*, the committee has included “willfully” in element 1A regarding direct infliction of abuse until there is further guidance from the courts.

## LESSER INCLUDED OFFENSES

- Attempted Abuse of Elder or Dependent Adult ▶ Pen. Code, §§ 664, 368(b)(1).
- Misdemeanor Abuse of Elder or Dependent Adult ▶ Pen. Code, § 368(c).

## RELATED ISSUES

### *Care or Custody*

“The terms ‘care or custody’ do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver.” (See *People v. Toney* (1999) 76 Cal.App.4th 618, 621–622 [90 Cal.Rptr.2d 578] [quoting *People v. Cochran* (1998) 62 Cal.App.4th 826, 832 [73 Cal.Rptr.2d 257]; both in context of parallel child abuse statute].)

### *Unanimity*

The court has a **sua sponte** duty to instruct on unanimity when the prosecution has presented evidence of multiple acts to prove a single count. (*People v. Russo* (2001) 25 Cal.4th 1124, 1132 [108 Cal.Rptr.2d 436, 25 P.3d 641].) However, the court does not have to instruct on unanimity if the offense constitutes a “continuous course of conduct.” (*People v. Napoles* (2002) 104 Cal.App.4th 108, 115–116 [127 Cal.Rptr.2d 777].) Elder abuse may be a continuous course of conduct or a single, isolated incident. (*People v. Rae* (2002) 102 Cal.App.4th 116, 123 [125 Cal.Rptr.2d 312].) The court should carefully examine the statute charged, the pleadings, and the evidence presented to determine whether the offense constitutes a continuous course of conduct. (*People v. Napoles, supra*, 104 Cal.App.4th at pp. 115–116.) See generally CALCRIM No. 3500, *Unanimity*.

## 850. Testimony on Intimate Partner Battering and Its Effects: Credibility of Complaining Witness

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You have heard testimony from \_\_\_\_\_ <insert name of expert>  
regarding the effect of (battered women's syndrome/intimate partner  
battering/\_\_\_\_\_ <insert other description used by expert for syndrome>).

\_\_\_\_\_ 's <insert name of expert> testimony about (battered women's  
syndrome/intimate partner battering/\_\_\_\_\_ <insert other description  
used by expert for syndrome>) is not evidence that the defendant committed  
any of the crimes charged against (him/her).

You may consider this evidence only in deciding whether or not \_\_\_\_\_ 's  
<insert name of alleged victim of abuse> conduct was not inconsistent with the  
conduct of someone who has been abused, and in evaluating the believability  
of (his/her) testimony.

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New January 2006

### BENCH NOTES

#### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction if an expert testifies on intimate partner battering and its effects, previously referred to as battered women's syndrome. (See *People v. Housley* (1992) 6 Cal.App.4th 947, 958-959 [8 Cal.Rptr.2d 431] [sua sponte duty in context of child sexual abuse accommodation syndrome]; *People v. Bledsoe* (1984) 36 Cal.3d 236, 250 [203 Cal.Rptr. 450, 681 P.2d 291] [rape trauma syndrome not admissible to prove rape occurred].) Several courts of review have concluded there is no sua sponte duty to give a similar limiting instruction (see CALCRIM No. 1193, *Testimony on Child Sexual Abuse Accommodation Syndrome*) when an expert testifies on child sexual abuse accommodation syndrome. (*People v. Mateo* (2016) 243 Cal.App.4th 1063, 1073-1074 [197 Cal.Rptr.3d 248]; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 736 [256 Cal.Rptr. 446] and *People v. Stark* (1989) 213 Cal.App.3d 107, 116 [261 Cal.Rptr. 479] [instruction required only on request].) See also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5, 1090-1091, 1100 [56 Cal.Rptr.2d 142, 92 P.2d 1], which concludes that a limiting instruction on battered woman syndrome is required only on request. But see *People v. Housley* (1992) 6 Cal.App.4th 947, 958-959 [9 Cal.Rptr.2d 431], which did find a sua sponte duty to give CALCRIM No. 1193.

In *People v. Brown* (2004) 33 Cal.4th 892, 906–908 [16 Cal.Rptr.3d 447, 94 P.3d 574], the Supreme Court held that testimony from an expert in battered women’s syndrome could be admitted under Evidence Code section 801 even though there was no evidence of prior incidents of violence between the defendant and the alleged victim. The court held that the expert could testify generally about the “cycle of violence” and the frequency of recantation by victims of domestic abuse, without testifying specifically about “battered women’s syndrome”. (*Ibid.*) It is unclear if the court is required to give a cautionary admonition sua sponte when such evidence is admitted.

### ***Related Instructions***

If this instruction is given, also give CALCRIM No. 303, *Limited Purpose Evidence in General*, and CALCRIM No. 332, *Expert Witness Testimony*.

See also CALCRIM No. 851, *Testimony on Intimate Partner Battering and Its Effects: Offered by the Defense*.

## **AUTHORITY**

- Instructional Requirements ▶ See Evid. Code, § 1107(a); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5 [56 Cal.Rptr.2d 142, 921 P.2d 1].
- Abuse Defined ▶ Evid. Code, § 1107(c); Fam. Code, § 6203.
- Domestic Violence Defined ▶ Evid. Code, § 1107(c); Fam. Code, § 6211.
- Relevant After Single Incident of Abuse ▶ See *People v. Brown* (2004) 33 Cal.4th 892, 906–908 [16 Cal.Rptr.3d 447, 94 P.3d 574]; *People v. Williams* (2000) 78 Cal.App.4th 1118, 1129 [93 Cal.Rptr.2d 356].
- Relevant to Rehabilitate Victim’s Credibility ▶ *People v. Gadlin* (2000) 78 Cal.App.4th 587, 594–595 [92 Cal.Rptr.2d 890] [victim recanted incident and reunited with abuser]; *People v. Morgan* (1997) 58 Cal.App.4th 1210, 1215–1217 [68 Cal.Rptr.2d 772] [victim recanted].

### ***Secondary Sources***

1 Witkin, *California Evidence* (4th ed. 2000) Opinion Evidence, §§ 48–51.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 71, *Scientific and Expert Evidence*, § 71.04[1][d][v][C] (Matthew Bender).

## **RELATED ISSUES**

### ***Assumptions Underlying Expert Testimony***

It is unnecessary, and potentially misleading, to instruct that the expert testimony assumes that physical or mental abuse has in fact occurred. (See *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387 [7 Cal.Rptr.2d 660] [in context of child sexual abuse accommodation syndrome].)

### ***Definition and Preferred Name***

In 2004, the Legislature amended Evidence Code section 1107(d), changing all references from “battered women’s syndrome” to “intimate partner battering and its effects.” Previous decisional law continues to apply. (Evid. Code, § 1107(f).) Battered women’s syndrome has been defined as “a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1083–1084 [56 Cal.Rptr.2d 142, 921 P.2d 1].) The Supreme Court had previously noted that experts prefer to call the syndrome “expert testimony on battered women’s experiences.” (See *People v. Humphrey, supra*, 13 Cal.4th at pp. 1083–1084, fn. 3.)

### ***No Testimony on Actual State of Mind***

While evidence is admissible “to explain how [a] defendant’s asserted subjective perception of a need to defend herself ‘would reasonably follow from the defendant’s experience as a battered woman,’ ” an expert may not give an opinion “that the defendant *actually perceived* that she was in danger and needed to defend herself.” (*People v. Erickson* (1997) 57 Cal.App.4th 1391, 1400, 1401 [67 Cal.Rptr.2d 740] [§ 1107(a) codifies existing rules regarding battered women’s syndrome testimony; original italics].) Section 1107 “does not create an exception to Penal Code section 29,” which prohibits an expert who is testifying about a mental defect from testifying about whether a defendant had a required mental state. (*People v. Erickson, supra*, 57 Cal.App.4th at pp. 1401–1402 [syndrome was characterized as mental defect].)

## 852A. Evidence of Uncharged Domestic Violence

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The People presented evidence that the defendant committed domestic violence that was not charged in this case[, specifically: \_\_\_\_\_ <insert other domestic violence alleged>.]

<Alternative A—As defined in Pen. Code, § 13700>

[Domestic violence means abuse committed against (an adult/a fully emancipated minor) who is a (spouse[,]/ [or] former spouse[,]/ [or] cohabitant[,]/ [or] former cohabitant[,]/ [or] person with whom the defendant has had a child[,]/ [or] person who dated or is dating the defendant[,]/ [or] person who was or is engaged to the defendant).]

<Alternative B—As defined in Fam. Code, § 6211>

[Domestic violence means abuse committed against a (child/grandchild/parent/grandparent/brother/sister) of the defendant.]

**Abuse** means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable fear of imminent serious bodily injury to himself or herself or to someone else.

[A *fully emancipated minor* is a person under the age of 18 who has gained certain adult rights by marrying, being on active duty for the United States armed services, or otherwise being declared emancipated under the law.]

[The term *cohabitants* means two unrelated persons living together for a substantial period of time, resulting in some permanency of the relationship. Factors that may determine whether people are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same residence, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) the parties' holding themselves out as husband and wife, (5) the parties' registering as domestic partners, (6) the continuity of the relationship, and (7) the length of the relationship.]

You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged domestic violence. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

**If the People have not met this burden of proof, you must disregard this evidence entirely.**

**If you decide that the defendant committed the uncharged domestic violence, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit domestic violence and, based on that decision, also conclude that the defendant was likely to commit [and did commit] \_\_\_\_\_ <insert charged offense[s] involving domestic violence>, as charged here. If you conclude that the defendant committed the uncharged domestic violence, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of \_\_\_\_\_ <insert charged offense[s] involving domestic violence>. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.**

**[Do not consider this evidence for any other purpose [except for the limited purpose of \_\_\_\_\_ <insert other permitted purpose, e.g., determining the defendant's credibility>].]**

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*New January 2006; Revised August 2006, June 2007, April 2008, February 2014 [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court must give this instruction on request when evidence of other domestic violence has been introduced. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 924 [89 Cal.Rptr.2d 847, 986 P.2d 182] [error to refuse limiting instruction on request]; *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1317–1318 [97 Cal.Rptr.2d 727]; *People v. Willoughby* (1985) 164 Cal.App.3d 1054, 1067 [210 Cal.Rptr. 880] [general limiting instructions should be given when evidence of past offenses would be highly prejudicial without them].)

If the court has admitted evidence that the defendant was convicted of a felony or committed a misdemeanor for the purpose of impeachment in addition to evidence admitted under Evidence Code section 1109, then the court must specify for the jury what evidence it may consider under section 1109. (*People v. Rollo* (1977) 20 Cal.3d 109, 123, fn. 6 [141 Cal.Rptr. 177, 569 P.2d 771] [discussing section 1101(b); superseded in part on other grounds as recognized in *People v. Olmedo* (1985) 167 Cal.App.3d 1085, 1096 [213 Cal.Rptr. 742]].) In the first sentence, insert a description of the uncharged offense allegedly shown by the section 1109 evidence. If the court has not admitted any felony convictions or misdemeanor

conduct for impeachment, then, in the first sentence, the court is not required to insert a description of the conduct alleged.

The definition of “domestic violence” contained in Evidence Code section 1109(d) was amended, effective January 1, 2006. The definition is now in subd. (d)(3), which states that, as used in section 1109:

‘Domestic violence’ has the meaning set forth in Section 13700 of the Penal Code. Subject to a hearing conducted pursuant to section 352, which shall include consideration of any corroboration and remoteness in time, ‘domestic violence’ has the further meaning as set forth in section 6211 of the Family Code, if the act occurred no more than five years before the charged offense.

If the court determines that the evidence is admissible pursuant to the definition of domestic violence contained in Penal Code section 13700, give the definition of domestic violence labeled alternative A. If the court determines that the evidence is admissible pursuant to the definition contained in Family Code section 6211, give the definition labeled alternative B.

Depending on the evidence, give on request the bracketed paragraphs defining “emancipated minor” (see Fam. Code, § 7000 et seq.) and “cohabitant” (see Pen. Code, § 13700(b)).

In the paragraph that begins with “If you decide that the defendant committed,” the committee has placed the phrase “and did commit” in brackets. One appellate court has criticized instructing the jury that it may draw an inference about disposition. (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823].) The court should review the Commentary section below and give the bracketed phrase at its discretion.

Give the final sentence that begins with “Do not consider” on request.

***Related Instructions***

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 1191B, *Evidence of ~~C~~Uncharged Sex Offense.*

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*

CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person.*

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

## AUTHORITY

- Instructional Requirement ▶ Evid. Code, § 1109(a)(1); see *People v. Reliford* (2003) 29 Cal.4th 1007, 1012–1016 [130 Cal.Rptr.2d 254, 62 P.3d 601]; *People v. Frazier* (2001) 89 Cal.App.4th 30, 37 [107 Cal.Rptr.2d 100]; *People v. Falsetta* (1999) 21 Cal.4th 903, 923–924 [89 Cal.Rptr.2d 847, 986 P.2d 182] [dictum].
- Abuse Defined ▶ Pen. Code, § 13700(a).
- Cohabitant Defined ▶ Pen. Code, § 13700(b).
- Domestic Violence Defined ▶ Evid. Code, § 1109(d)(3); Pen. Code, § 13700(b); Fam. Code, § 6211; see *People v. Poplar* (1999) 70 Cal.App.4th 1129, 1139 [83 Cal.Rptr.2d 320] [spousal rape is higher level of domestic violence].
- Emancipation of Minors Law ▶ Fam. Code, § 7000 et seq.
- Other Crimes Proved by Preponderance of Evidence ▶ *People v. Carpenter* (1997) 15 Cal.4th 312, 382 [63 Cal.Rptr.2d 1, 935 P.2d 708]; *People v. James* (2000) 81 Cal.App.4th 1343, 1359 [96 Cal.Rptr.2d 823].
- Propensity Evidence Alone Is Not Sufficient to Support Conviction Beyond a Reasonable Doubt ▶ *People v. Younger* (2000) 84 Cal.App.4th 1360, 1382 [101 Cal.Rptr.2d 624]; *People v. James* (2000) 81 Cal.App.4th 1343, 1357–1358, fn. 8 [96 Cal.Rptr.2d 823]; see *People v. Hill* (2001) 86 Cal.App.4th 273, 277–278 [103 Cal.Rptr.2d 127] [in context of prior sexual offenses].
- Charged Sex Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▶ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186–1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].
- This Previous Version of This Instruction Upheld ▶ *People v. Johnson* (2008) 164 Cal.App.4th 731, 738 [79 Cal.Rptr.3d 568].
- No Sua Sponte Duty to Give Similar Instruction ▶ *People v. Cottone* (2013) 57 Cal.4th 269, 293, fn. 15 [159 Cal.Rptr.3d 385, 303 P.3d 1163].

### *Secondary Sources*

5 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Trial, § 640.

1 Witkin, *California Evidence* (4th ed. 2000) Circumstantial Evidence, § 98.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.12[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.13 (Matthew Bender).

## COMMENTARY

The paragraph that begins with “If you decide that the defendant committed” tells the jury that they may draw an inference of disposition. (See *People v. Hill* (2001) 86 Cal.App.4th 273, 275–279 [103 Cal.Rptr.2d 127]; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334–1335 [92 Cal.Rptr.2d 433].) One appellate court, however, suggests using more general terms to instruct the jury how they may use evidence of other domestic violence offenses, “leaving particular inferences for the argument of counsel and the jury’s common sense.” (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823] [includes suggested instruction].) If the trial court adopts this approach, the paragraph that begins with “If you decide that the defendant committed the uncharged domestic violence” may be replaced with the following:

If you decide that the defendant committed the uncharged domestic violence, you may consider that evidence and weigh it together with all the other evidence received during the trial to help you determine whether the defendant committed \_\_\_\_\_ <insert charged offense involving domestic violence>. Remember, however, that evidence of uncharged domestic violence is not sufficient alone to find the defendant guilty of \_\_\_\_\_ <insert charged offense involving domestic violence>. The People must still prove (the/each) (charge/ [and] allegation) of \_\_\_\_\_ <insert charged offense involving domestic violence> beyond a reasonable doubt.

## RELATED ISSUES

### *Constitutional Challenges*

Evidence Code section 1109 does not violate a defendant’s rights to due process (*People v. Escobar* (2000) 82 Cal.App.4th 1085, 1095–1096 [98 Cal.Rptr.2d 696]; *People v. Hoover* (2000) 77 Cal.App.4th 1020, 1028–1029 [92 Cal.Rptr.2d 208]; *People v. Johnson* (2000) 77 Cal.App.4th 410, 420 [91 Cal.Rptr.2d 596]; see *People v. Falsetta* (1999) 21 Cal.4th 903, 915–922 [89 Cal.Rptr.2d 847, 986 P.2d 182] (construing Evid. Code, § 1108, a parallel statute to Evid. Code, § 1109); *People v. Branch* (2001) 91 Cal.App.4th 274, 281 [109 Cal.Rptr.2d 870]

(construing Evid. Code, § 1108) or equal protection (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1310–1313 [97 Cal.Rptr.2d 727]; see *People v. Fitch* (1997) 55 Cal.App.4th 172, 184–185 [63 Cal.Rptr.2d 753] (construing Evid. Code, § 1108).

***Exceptions***

Evidence of domestic violence occurring more than 10 years before the charged offense is inadmissible under section 1109 of the Evidence Code, unless the court determines that the admission of this evidence is in the interest of justice. (Evid. Code, § 1109(e).) Evidence of the findings and determinations of administrative agencies regulating health facilities is also inadmissible under section 1109. (Evid. Code, § 1109(f).)

See the Related Issues sections of CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*, and CALCRIM No. 1191, *Evidence of Uncharged Sex Offense*.

## 852B. Evidence of Charged Domestic Violence

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**The People presented evidence that the defendant committed the crime[s] of \_\_\_\_\_ <insert description of offense[s]> charged in Count[s] \_\_\_\_\_ <insert count[s] of domestic violence offense[s] charged in this case >.**

**If the People have proved beyond a reasonable doubt that the defendant committed one or more of these crimes, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit domestic violence offenses, and based on that decision, also conclude that the defendant was likely to commit [and did commit] the other domestic violence offenses charged in this case.**

**If you find that the defendant committed one or more of these crimes, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of another crime. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.**

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*New [insert date of council approval]*

### BENCH NOTES

#### ***Instructional Duty***

The court must give this instruction on request if the People rely on charged offenses as evidence of predisposition to commit similar crimes charged in the same case. (Evid. Code § 355.)

#### ***Related Instructions***

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 1191B, *Evidence of Charged Sex Offense.*

CALCRIM No. 852A, *Evidence of Uncharged Domestic Violence.*

CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person.*

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

## AUTHORITY

- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▶ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].

**853A. Evidence of Uncharged Abuse of Elder or Dependent Person**

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The People presented evidence that the defendant committed abuse of (an elder/a dependent person) that was not charged in this case[, specifically: \_\_\_\_\_ <insert other abuse alleged>.] Abuse of (an elder/a dependent person) means (physical abuse[,]/ [or] sexual abuse[,]/ [or] neglect[,]/ [or] financial abuse[,]/ [or] abandonment[,]/ [or] isolation[,]/ [or] abduction[,]/[or] the act by a care custodian of not providing goods or services that are necessary to avoid physical harm or mental suffering[,]/ [or] [other] treatment that results in physical harm or pain or mental suffering).

[An *elder* is a person residing in California who is age 65 or older.]

[A *dependent person* is a person who has physical or mental impairments that substantially restrict his or her ability to carry out normal activities or to protect his or her rights. This definition includes, but is not limited to, those who have developmental disabilities or whose physical or mental abilities have significantly diminished because of age.]

You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged abuse of (an elder/a dependent person). Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

If the People have not met this burden of proof, you must disregard this evidence entirely.

If you decide that the defendant committed the uncharged abuse of (an elder/a dependent person), you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit abuse of (an elder/a dependent person), and based on that decision, also conclude that the defendant was likely to commit [and did commit] \_\_\_\_\_ <insert charged offense[s] involving abuse of elder or dependent person>, as charged here. If you conclude that the defendant committed the uncharged abuse of (an elder/a dependent person), that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of \_\_\_\_\_ <insert charged offense[s] involving abuse of elder or dependent person>. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.

**[Do not consider this evidence for any other purpose [except for the limited purpose of \_\_\_\_\_ <insert other permitted purpose, e.g., determining the defendant’s credibility>].]**

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*New January 2006; Revised April 2008, February 2014 [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court must give this instruction on request when evidence of other abuse of an elder or dependent person has been introduced. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 924 [89 Cal.Rptr.2d 847, 986 P.2d 182] [error to refuse limiting instruction on request]; *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1317–1318 [97 Cal.Rptr.2d 727]; *People v. Willoughby* (1985) 164 Cal.App.3d 1054, 1067 [210 Cal.Rptr. 880] [general limiting instructions should be given when evidence of past offenses would be highly prejudicial without them].)

If the court has admitted evidence that the defendant was convicted of a felony or committed a misdemeanor for the purpose of impeachment in addition to evidence admitted under Evidence Code section 1109, then the court must specify for the jury what evidence it may consider under section 1109. (*People v. Rollo* (1977) 20 Cal.3d 109, 123, fn. 6 [141 Cal.Rptr. 177, 569 P.2d 771] [discussing section 1101(b); superseded in part on other grounds as recognized in *People v. Olmedo* (1985) 167 Cal.App.3d 1085, 1096 [213 Cal.Rptr. 742]].) In the first sentence, insert a description of the uncharged offense allegedly shown by the section 1109 evidence. If the court has not admitted any felony convictions or misdemeanor conduct for impeachment, then, in the first sentence, the court is not required to insert a description of the conduct alleged.

Depending on the evidence, give on request the bracketed definition of an elder or dependent person. (See Welf. & Inst. Code, §§ 15610.23 [dependent adult], 15610.27 [elder].) Other terms may be defined on request depending on the evidence. See the Authority section below for references to selected definitions from the Elder Abuse and Dependent Adult Civil Protection Act. (See Welf. & Inst. Code, § 15600 et seq.)

In the paragraph that begins with “If you decide that the defendant committed,” the committee has placed the phrase “and did commit” in brackets. One appellate court has criticized instructing the jury that it may draw an inference about disposition. (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823].) The court should review the Commentary section below and give the bracketed phrase at its discretion.

Give the bracketed sentence that begins with “Do not consider” on request.

### ***Related Instructions***

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, or Common Plan, etc.*

CALCRIM No. 852A, *Evidence of Uncharged Domestic Violence.*

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 1191B, *Evidence of Charged Sex Offense.*

## **AUTHORITY**

- Instructional Requirement ▶ Evid. Code, § 1109(a)(2).
- Abandonment Defined ▶ Welf. & Inst. Code, § 15610.05.
- Abduction Defined ▶ Welf. & Inst. Code, § 15610.06.
- Abuse of Elder or Dependent Person Defined ▶ Evid. Code, § 1109(d)(1).
- Care Custodian Defined ▶ Welf. & Inst. Code, § 15610.17.
- Dependent Person Defined ▶ Evid. Code, § 177.
- Elder Defined ▶ Welf. & Inst. Code, § 15610.27.
- Financial Abuse Defined ▶ Welf. & Inst. Code, § 15610.30.
- Goods and Services Defined ▶ Welf. & Inst. Code, § 15610.35.
- Isolation Defined ▶ Welf. & Inst. Code, § 15610.43.
- Mental Suffering Defined ▶ Welf. & Inst. Code, § 15610.53.
- Neglect Defined ▶ Welf. & Inst. Code, § 15610.57.
- Physical Abuse Defined ▶ Welf. & Inst. Code, § 15610.63.
- Other Crimes Proved by Preponderance of Evidence ▶ *People v. Carpenter* (1997) 15 Cal.4th 312, 382 [63 Cal.Rptr.2d 1, 935 P.2d 708]; *People v. James* (2000) 81 Cal.App.4th 1343, 1359 [96 Cal.Rptr.2d 823].
- Propensity Evidence Alone Is Not Sufficient to Support Conviction Beyond a Reasonable Doubt ▶ *People v. Younger* (2000) 84 Cal.App.4th 1360, 1382 [101 Cal.Rptr.2d 624]; *People v. James, supra*, 81 Cal.App.4th at pp. 1357–1358, fn. 8 [96 Cal.Rptr.2d 823] [in context of prior domestic violence offenses]; see *People v. Hill* (2001) 86 Cal.App.4th 273, 277–278 [103 Cal.Rptr.2d 127] [in context of prior sexual offenses].

- Charged Sex Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▶ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].
- No Sua Sponte Duty To Give Similar Instruction ▶ *People v. Cottone* (2013) 57 Cal.4th 269, 293, fn. 15 [159 Cal.Rptr.3d 385, 303 P.3d 1163].

### *Secondary Sources*

1 Witkin, California Evidence (4th ed. 2000) Circumstantial Evidence, § 98.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, *Evidence*, § 83.12[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.13[5] (Matthew Bender).

## **COMMENTARY**

The paragraph that begins with “If you decide that the defendant committed” tells the jury that they may draw an inference of disposition. (See *People v. Hill, supra*, 86 Cal.App.4th at pp. 275–279; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334–1335 [92 Cal.Rptr.2d 433].) One appellate court, however, suggests using more general terms to instruct the jury how they may use evidence of other domestic violence offenses, “leaving particular inferences for the argument of counsel and the jury’s common sense.” (*People v. James, supra*, 81 Cal.App.4th at p. 1357, fn. 8 [96 Cal.Rptr.2d 823] [includes suggested instruction].) If the trial court adopts this approach, the paragraph that begins with “If you decide that the defendant committed the uncharged abuse of (an elder/a dependent person)” may be replaced with the following:

If you decide that the defendant committed the uncharged abuse of (an elder/a dependent person), you may consider that evidence and weigh it together with all the other evidence received during the trial to help you determine whether the defendant committed \_\_\_\_\_ <insert charged offense involving abuse of elder or dependent person>. Remember, however, that evidence of uncharged abuse of (an elder/a dependent person) is not sufficient alone to find the defendant guilty of \_\_\_\_\_ <insert charged offense involving abuse of elder or dependent person>. The People must still prove (the/each) (charge/ [and] allegation) of \_\_\_\_\_ <insert charged offense involving abuse of elder or dependent person> beyond a reasonable doubt.

## RELATED ISSUES

### *Exceptions*

Evidence of abuse of an elder or dependent person occurring more than 10 years before the charged offense is inadmissible under Evidence Code section 1109, unless the court determines that the admission of this evidence is in the interest of justice. (Evid. Code, § 1109(e).) Evidence of the findings and determinations of administrative agencies regulating health facilities is also inadmissible under section 1109. (Evid. Code, § 1109(f).)

See the Related Issues sections of CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*, CALCRIM No. 852, *Evidence of Uncharged Domestic Violence*, and CALCRIM No. 1191, *Evidence of Uncharged Sex Offense*.

~~854–859. Reserved for Future Use~~

### **853B. Evidence of Charged Abuse of Elder or Dependent Person**

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**The People presented evidence that the defendant committed the crime[s] of \_\_\_\_\_ <insert description of offense[s]> charged in Count[s] \_\_\_\_\_ <insert count[s] of elder or dependent person abuse charged in this case >.**

**If the People have proved beyond a reasonable doubt that the defendant committed one or more of these crimes, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit abuse of (elders/ [or] dependent persons), and based on that decision, also conclude that the defendant was likely to commit [and did commit] the other (elder/ [or] dependent person) abuse offense[s] charged in this case.**

**If you find that the defendant committed one or more of these crimes, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of another crime. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.**

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*New [insert date of council approval]*

## **BENCH NOTES**

### ***Instructional Duty***

The court must give this instruction on request if the People rely on charged offenses as evidence of predisposition to commit similar crimes charged in the same case. (Evid. Code § 355.)

### ***Related Instructions***

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense*.

CALCRIM No. 1191B, *Evidence of Charged Sex Offense*.

CALCRIM No. 852A, *Evidence of Domestic Violence*.

CALCRIM No. 852B, *Evidence of Domestic Violence*.

CALCRIM No. 853A, *Evidence of Elder or Dependent Person Abuse*.

## **AUTHORITY**

- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ► *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].

**854–859. Reserved for Future Use**

## 1191A. Evidence of Uncharged Sex Offense

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The People presented evidence that the defendant committed the crime[s] of \_\_\_\_\_ <insert description of offense[s]> that (was/were) not charged in this case. (This/These) crime[s] (is/are) defined for you in these instructions.

You may consider this evidence only if the People have proved by a preponderance of the evidence that the defendant in fact committed the uncharged offense[s]. Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.

If the People have not met this burden of proof, you must disregard this evidence entirely.

If you decide that the defendant committed the uncharged offense[s], you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit [and did commit] \_\_\_\_\_ <insert charged sex offense[s]>, as charged here. If you conclude that the defendant committed the uncharged offense[s], that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of \_\_\_\_\_ <insert charged sex offense[s]>. The People must still prove (the/each) \_\_\_\_\_ (charge/ [and] allegation) beyond a reasonable doubt.

[Do not consider this evidence for any other purpose [except for the limited purpose of \_\_\_\_\_ <insert other permitted purpose, e.g., determining the defendant's credibility>].]

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*New January 2006; Revised April 2008, February 2013, February 2014* *insert date of council approval*

### BENCH NOTES

#### *Instructional Duty*

Although there is ordinarily no sua sponte duty (*People v. Cottone* (2013) 57 Cal.4th 269, 293, fn. 15 [159 Cal.Rptr.3d 385, 303 P.3d 1163]), the court must give this instruction on request when evidence of other sexual offenses has been introduced. (See *People v. Falsetta* (1999) 21 Cal.4th 903, 924 [89 Cal.Rptr.2d

847, 986 P.2d 182] [error to refuse limiting instruction on request]; *People v. Jennings* (2000) 81 Cal.App.4th 1301, 1317–1318 [97 Cal.Rptr.2d 727] [in context of prior acts of domestic violence].)

Evidence Code section 1108(a) provides that “evidence of the defendant’s commission of another sexual offense or offenses is not made inadmissible by Section 1101.” Subdivision (d)(1) defines “sexual offense” as “a crime under the law of a state or of the United States that involved any of the following[,]” listing specific sections of the Penal Code as well as specified sexual conduct. In the first sentence, the court must insert the name of the offense or offenses allegedly shown by the evidence. The court **must** also instruct the jury on elements of the offense or offenses.

In the fourth paragraph, the committee has placed the phrase “and did commit” in brackets. One appellate court has criticized instructing the jury that it may draw an inference about disposition. (*People v. James* (2000) 81 Cal.App.4th 1343, 1357, fn. 8 [96 Cal.Rptr.2d 823].) The court should review the Commentary section below and give the bracketed phrase at its discretion.

Give the bracketed sentence that begins with “Do not consider” on request.

### ***Related Instructions***

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

[CALCRIM No. 1191B, Evidence of Charged Sex Offense.](#)

[CALCRIM No. 852A, Evidence of Uncharged Domestic Violence.](#)

[CALCRIM No. 852B, Evidence of Charged Domestic Violence.](#)

[CALCRIM No. 853A, Evidence of Uncharged Abuse of Elder or Dependent Person.](#)

[CALCRIM No. 853B, Evidence of Charged Abuse of Elder or Dependent Person.](#)

## **AUTHORITY**

- Instructional Requirement ▶ Evid. Code, § 1108(a); see *People v. Reliford* (2003) 29 Cal.4th 1007, 1012–1016 [130 Cal.Rptr.2d 254, 62 P.3d 601]; *People v. Frazier* (2001) 89 Cal.App.4th 30, 37 [107 Cal.Rptr.2d 100]; *People v. Falsetta, supra*, 21 Cal.4th at pp. 923–924 [dictum].

- [Previous Version of CALCRIM No. 1191 Upheld](#) ▶ *People v. Schnabel* (2007) 150 Cal.App.4th 83, 87 [57 Cal.Rptr.3d 922]; *People v. Cromp* (2007) 153 Cal.App.4th 476, 480 [62 Cal.Rptr.3d 848].
- Sexual Offense Defined ▶ Evid. Code, § 1108(d)(1).
- Other Crimes Proved by Preponderance of Evidence ▶ *People v. Carpenter* (1997) 15 Cal.4th 312, 382 [63 Cal.Rptr.2d 1, 935 P.2d 708]; *People v. James, supra*, 81 Cal.App.4th at p. 1359; *People v. Van Winkle* (1999) 75 Cal.App.4th 133, 146 [89 Cal.Rptr.2d 28].
- Propensity Evidence Alone Is Not Sufficient to Support Conviction Beyond a Reasonable Doubt ▶ *People v. Hill* (2001) 86 Cal.App.4th 273, 277–278 [103 Cal.Rptr.2d 127]; see *People v. Younger* (2000) 84 Cal.App.4th 1360, 1382 [101 Cal.Rptr.2d 624] [in context of prior acts of domestic violence]; *People v. James, supra*, 81 Cal.App.4th at pp. 1357–1358, fn. 8 [same].
- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▶ [People v. Cruz \(2016\) 2 Cal.App.5th 1178, 1186-1186 \[206 Cal.Rptr.3d 835\]](#); *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].

### *Secondary Sources*

1 Witkin, California Evidence (4th ed. 2000) Circumstantial Evidence, §§ 96–97.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.23[3][e][ii], [4] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and -Procedure § 12:9 (The Rutter Group).

## COMMENTARY

The fourth paragraph of this instruction tells the jury that they may draw an inference of disposition. (See *People v. Hill* (2001) 86 Cal.App.4th 273, 275–279 [103 Cal.Rptr.2d 127]; *People v. Brown* (2000) 77 Cal.App.4th 1324, 1334–1335 [92 Cal.Rptr.2d 433] [in context of prior acts of domestic violence].) One appellate court, however, suggests using more general terms to instruct the jury how they may use evidence of other sexual offenses, “leaving particular inferences for the argument of counsel and the jury’s common sense.” (*People v. James, supra*, 81 Cal.App.4th at p. 1357, fn. 8 [includes suggested instruction].) If the trial court adopts this approach, the fourth paragraph may be replaced with the following:

If you decide that the defendant committed the other sexual offense[s], you may consider that evidence and weigh it together with all the other evidence received during the trial to help you determine whether the defendant committed \_\_\_\_\_ <insert charged sex offense>. Remember, however, that evidence of another sexual offense is not sufficient alone to find the defendant guilty of \_\_\_\_\_ <insert charged sex offense>. The People must still prove (the/each) \_\_\_\_\_ (charge/ [and] allegation) of \_\_\_\_\_ <insert charged sex offense> beyond a reasonable doubt.

## RELATED ISSUES

### ***Constitutional Challenges***

Evidence Code section 1108 does not violate a defendant’s rights to due process (*People v. Falsetta* (1999) 21 Cal.4th 903, 915–922 [89 Cal.Rptr.2d 847, 986 P.2d 182]; *People v. Branch* (2001) 91 Cal.App.4th 274, 281 [109 Cal.Rptr.2d 870]; *People v. Fitch* (1997) 55 Cal.App.4th 172, 184 [63 Cal.Rptr.2d 753]) or equal protection (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1310–1313 [97 Cal.Rptr.2d 727]; *People v. Fitch, supra*, 55 Cal.App.4th at pp. 184–185).

### ***Expert Testimony***

Evidence Code section 1108 does not authorize expert opinion evidence of sexual propensity during the prosecution’s case-in-chief. (*People v. McFarland* (2000) 78 Cal.App.4th 489, 495–496 [92 Cal.Rptr.2d 884] [expert testified on ultimate issue of abnormal sexual interest in child].)

### ***Rebuttal Evidence***

When the prosecution has introduced evidence of other sexual offenses under Evidence Code section 1108(a), the defendant may introduce rebuttal character evidence in the form of opinion evidence, reputation evidence, and evidence of

specific incidents of conduct under similar circumstances. (*People v. Callahan* (1999) 74 Cal.App.4th 356, 378–379 [87 Cal.Rptr.2d 838].)

***Subsequent Offenses Admissible***

“[E]vidence of subsequently committed sexual offenses may be admitted pursuant to Evidence Code section 1108.” (*People v. Medina* (2003) 114 Cal.App.4th 897, 903 [8 Cal.Rptr.3d 158].)

***Evidence of Acquittal***

If the court admits evidence that the defendant committed a sexual offense that the defendant was previously acquitted of, the court must also admit evidence of the acquittal. (*People v. Mullens* (2004) 119 Cal.App.4th 648, 663 [14 Cal.Rptr.3d 534].)

See also the Related Issues section of CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

## 1191B. Evidence of Charged Sex Offense

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**The People presented evidence that the defendant committed the crime[s] of \_\_\_\_\_ <insert description of offense[s]> charged in Count[s] \_\_\_\_\_ <insert count[s] of sex offense[s] charged in this case >.**

**If the People have proved beyond a reasonable doubt that the defendant committed one or more of these crimes, you may, but are not required to, conclude from that evidence that the defendant was disposed or inclined to commit sexual offenses, and based on that decision, also conclude that the defendant was likely to commit [and did commit] the other sex offense[s] charged in this case.**

**If you find that the defendant committed one or more of these crimes, that conclusion is only one factor to consider along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of another crime. The People must still prove (the/each) (charge/ [and] allegation) beyond a reasonable doubt.**

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*New [insert date of council approval]*

### BENCH NOTES

#### ***Instructional Duty***

The court must give this instruction on request if the People rely on charged offenses as evidence of predisposition to commit similar crimes charged in the same case, Evid. Code section 355.

#### ***Related Instructions***

CALCRIM No. 375, *Evidence of Uncharged Offense to Prove Identity, Intent, Common Plan, etc.*

CALCRIM No. 1191A, *Evidence of Uncharged Sex Offense.*

CALCRIM No. 852A, *Evidence of Uncharged Domestic Violence.*

CALCRIM No. 852B, *Evidence of Charged Domestic Violence.*

CALCRIM No. 853A, *Evidence of Uncharged Abuse of Elder or Dependent Person.*

CALCRIM No. 853B, *Evidence of Charged Abuse of Elder or Dependent Person.*

## AUTHORITY

- Charged Offenses Proved Beyond a Reasonable Doubt May Be Evidence of Propensity ▶ *People v. Cruz* (2016) 2 Cal.App.5th 1178, 1186-1186 [206 Cal.Rptr.3d 835]; *People v. Villatoro* (2012) 54 Cal.4th 1152, 1161 [144 Cal.Rptr.3d 401, 281 P.3d 390].

**937. Sexual Battery: By Fraudulent Representation (Pen. Code, §§ 242, 243.4(c))**

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**The defendant is charged [in Count \_\_] with sexual battery by fraudulent representation [in violation of Penal Code section 243.4(c)].**

**To prove that the defendant is guilty of this crime, the People must prove that:**

- 1. The defendant touched an intimate part of \_\_\_\_\_'s <insert name of complaining witness> body;**
- 2. The touching was done for the specific purpose of sexual arousal, sexual gratification, or sexual abuse;**
- 3. The defendant fraudulently represented that the touching served a professional purpose;**

**AND**

- 4. The person touched was not conscious of the sexual nature of the act because of the fraudulent representation.**

**An *intimate part* is a female's breast or the anus, groin, sexual organ or buttocks of anyone.**

**Contact must have been made with \_\_\_\_\_'s <insert name of complaining witness> bare skin. This means that the defendant must have touched the bare skin of \_\_\_\_\_'s <insert name of complaining witness> intimate part either directly or through the defendant's clothing.**

**A person is *not conscious of the sexual nature of the act* if he or she is not aware of the essential characteristics of the act because the perpetrator fraudulently represented that the touching served a professional purpose when it did not.**

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*New January 2006; Revised February 2012* *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

### AUTHORITY

- Elements ▶ Pen. Code, §§ 242, 243.4(c).
- Intimate Part Defined ▶ Pen. Code, § 243.4(g)(1).
- Touches Defined ▶ Pen. Code, § 243.4(f).
- Unconscious of Nature of Act Defined ▶ See Pen. Code, § 261(a)(4)(D) [in context of rape].
- Sexual Abuse Defined ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205 [224 Cal.Rptr. 467].

### *Secondary Sources*

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 74.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.22[1] (Matthew Bender).

## LESSER INCLUDED OFFENSES

- Assault ▶ Pen. Code, § 240.
- ~~Neither sexual battery nor attempted sexual battery is a lesser included offense of sexual battery by fraudulent representation. *People v. Babaali* (2009) 171 Cal.App.4th 982, 1000 [90 Cal.Rptr.3d 278]. Misdemeanor sexual battery is not a lesser included offense of sexual battery by misrepresentation of professional purpose under the statutory elements test. *People v. Robinson* (2016) 63 Cal.4th 200, 210-213 [202 Cal.Rptr.3d 485, 370 P.3d 1043].~~
- Attempted sexual battery is not a lesser included offense of sexual battery by fraudulent representation. *People v. Babaali* (2009) 171 Cal.App.4th 982, 1000 [90 Cal.Rptr.3d 278].

## COMMENTARY

In a case addressing the meaning of for the “purpose of . . . sexual abuse” in the context of Penal Code section 289, one court stated, “when a penetration is accomplished for the purpose of causing pain, injury or discomfort, it becomes sexual abuse, even though the perpetrator may not necessarily achieve any sexual arousal or gratification whatsoever.” (*People v. White* (1986) 179 Cal.App.3d 193, 205 [224 Cal.Rptr. 467].) If the court concludes it this reasoning applies to the crime sexual battery and a party requests a definition of “sexual abuse,” the following language can be used:

*Sexual abuse* means any touching of a person’s intimate parts in order to cause pain, injury, or discomfort. The perpetrator does not need to achieve any sexual arousal or sexual gratification.

## RELATED ISSUES

### ***Consent Obtained by Fraudulent Representation***

A person may induce someone else to consent to engage in a sexual act by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c.) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567].)

## 960. Simple Battery (Pen. Code, § 242)

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The defendant is charged with battery [in violation of Penal Code section 242].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully [and unlawfully] touched \_\_\_\_\_ <insert name> in a harmful or offensive manner(;/.)

<Give element 2 when instructing on self-defense, defense of another, or reasonable discipline.>

[AND

2. The defendant did not act (in self-defense/ [or] in defense of someone else/ [or] while reasonably disciplining a child).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

The slightest touching can be enough to commit a battery if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

~~[Words alone, no matter how offensive or exasperating, are not an excuse for this crime.]~~

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New January 2006; Revised August 2013, February 2014 [insert date of council approval]

### BENCH NOTES

#### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 2, the bracketed words “and unlawfully” in element 1, and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

If there is sufficient evidence of reasonable parental discipline, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 2, the bracketed words “and unlawfully” in element 1, and CALCRIM No. 3405, *Parental Right to Punish a Child*.

Give the bracketed paragraph on indirect touching if that is an issue.

### **AUTHORITY**

- Elements ▶ Pen. Code, § 242; see *People v. Martinez* (1970) 3 Cal.App.3d 886, 889 [83 Cal.Rptr. 914] [harmful or offensive touching].
- Willful Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Defense of Parental Discipline ▶ *People v. Whitehurst* (1992) 9 Cal.App.4th 1045, 1051 [12 Cal.Rptr.2d 33].

### ***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 12-16.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.12 (Matthew Bender).

### **LESSER INCLUDED OFFENSES**

- Assault ▶ Pen. Code, § 240.

## RELATED ISSUES

### *Touching of Something Attached to or Closely Connected with Person*

The committee could not locate any authority on whether it is sufficient to commit a battery if the defendant touches something attached to or closely connected with the person. Thus, the committee has not included this principle in the instruction.

### *Battery Against Elder or Dependent Adult*

When a battery is committed against an elder or dependent adult as defined in Penal Code section 368, with knowledge that the victim is an elder or a dependent adult, special punishments apply. (Pen. Code, § 243.25.)

## RELATED INSTRUCTION

*CALCRIM No. 917, Insulting Words Are Not a Defense.*

**961–964. Reserved for Future Use**

**1082. Oral Copulation With Person Under 18 (Pen. Code, § 288a(b)(1))**

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The defendant is charged [in Count \_\_] with oral copulation with a person who was under the age of 18 [in violation of Penal Code section 288a(b)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant participated in an act of oral copulation with another person;

AND

2. The other person was under the age of 18 when the act was committed.

*Oral copulation* is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.

[It is not a defense that the other person may have consented to the act.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

<Defense: Good Faith Belief 18 or Over>

[The defendant is not guilty of this crime if (he/she) reasonably and actually believed that the other person was age 18 or older. The People must prove beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person was at least 18 years old. If the People have not met this burden, you must find the defendant not guilty of this crime.]

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New January 2006 *[insert date of council approval]*

**BENCH NOTES**

***Instructional Duty***

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Give the bracketed paragraph that begins with “It is not a defense that” on request, if there is evidence that the minor consented to the act. (See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502].)

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

### ***Defenses—Instructional Duty***

If there is sufficient evidence that the defendant reasonably and actually believed that the minor was age 18 or older, the court has a **sua sponte** duty to instruct on the defense. (See *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673]; *People v. Winters* (1966) 242 Cal.App.2d 711, 716 [51 Cal.Rptr. 735].)

## **AUTHORITY**

- Elements ▶ Pen. Code, § 288a(b)(1).
- Oral Copulation Defined ▶ Pen. Code, § 288a(a); *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884] [in context of lewd acts with children].
- Minor’s Consent Not a Defense ▶ See *People v. Kemp* (1934) 139 Cal.App. 48, 51 [34 P.2d 502] [in context of statutory rape].
- Mistake of Fact Regarding Age ▶ *People v. Hernandez* (1964) 61 Cal.2d 529, 535–536 [39 Cal.Rptr. 361, 393 P.2d 673] [in context of statutory rape]; *People v. Peterson* (1981) 126 Cal.App.3d 396, 397 [178 Cal.Rptr. 734].

### ***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Defenses, § 46.

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, §§ 142.20[1][c], [3][b], 142.23[2] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

## **LESSER INCLUDED OFFENSES**

~~Attempted Oral Copulation With Minor ▶ Pen. Code, §§ 664, 288a(b)(1).~~

A violation of Penal Code section 288.3 is not a lesser included offense of attempted oral copulation, because attempt can be committed without contacting or communicating with the victim under the statutory elements test. (*People v. Medelez* (2016) 2 Cal.App.5th 659, 663 [206 Cal.Rptr.3d 402].)

## RELATED ISSUES

### *Minor Perpetrator*

A minor under age 14 may be adjudged responsible for violating Penal Code section 288a(b)(1) upon clear proof of the minor's knowledge of wrongfulness. (Pen. Code, § 26; *In re Paul C.* (1990) 221 Cal.App.3d 43, 49 [270 Cal.Rptr. 369].)

See the Related Issues section under CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

**1083–1089. Reserved for Future Use**

**1124. Contacting Minor With Intent to Commit Certain Felonies (Pen. Code, § 288.3(a))**

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The defendant is charged [in Count \_\_] with contacting a minor with the intent to commit \_\_\_\_\_ <insert enumerated offense from statute> [in violation of Penal Code section 288.3(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (contacted or communicated with/ [or] attempted to contact or communicate with) a minor;
2. When the defendant did so, (he/she) intended to commit \_\_\_\_\_ <insert enumerated offense from statute> involving that minor;

AND

3. The defendant knew or reasonably should have known that the person was a minor.

A *minor* is a person under the age of 18.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

*Contacting or communicating* with a minor includes direct and indirect contact or communication. [That contact or communication may take place personally or by using (an agent or agency/ [or] any print medium/ [or] any postal service/ [or] a common carrier/ [or] communication common carrier/ [or] any electronic communications system/ [or] any telecommunications/ [or] wire/ [or] computer/ [or] radio communications [device or system]).]

To decide whether the defendant intended to commit <specify sex offense[s] listed in Pen. Code, § 288.3(a)>, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].

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New August 2009 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to define the elements of the underlying/target sex offense. (See *People v. Hughes* (2002) 27 Cal.4th 287, 349 [116 Cal.Rptr.2d 401, 39 P.3d 432 and *People v. May* (1989) 213 Cal.App.3d 118, 129 [261 Cal.Rptr. 502].)

The court has a sua sponte duty to instruct on the good faith belief that the victim was not a minor as a defense for certain sex crimes with minors, including statutory rape, when that defense is supported by evidence. Until courts of review clarify whether this defense is available in prosecutions for violations of Pen. Code, § 288.3(a), the court will have to exercise its own discretion. Suitable language for such an instruction is found in CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

## AUTHORITY

- Elements and Enumerated Offenses ▶ Pen. Code, § 288.3(a).
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 273, 855 P.2d 391].

## LESSER INCLUDED OFFENSES

Attempted oral copulation is not a necessarily included offense of Penal Code section 288.3 under the statutory elements test, because luring can be committed without a direct act. (*People v. Medelez* (2016) 2 Cal.App.5th 659, 663 [206 Cal.Rptr.3d 402].)

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Sex Offenses and Crimes Against Decency, § 54B.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.21 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).



**1125. Arranging Meeting With Minor for Lewd Purpose (Pen. Code, § 288.4(a)(1))**

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The defendant is charged [in Count \_\_] with arranging a meeting with a minor for a lewd purpose [while having a prior conviction] [in violation of Penal Code section 288.4(a)(1)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant arranged a meeting with (a minor / [or] a person (he/she) believed to be a minor);
2. When the defendant did so, (he/she) was motivated by an unnatural or abnormal sexual interest in children;

[AND]

3. At that meeting, the defendant intended to (expose (his/her) genitals or pubic or rectal area/ [or] have the minor expose (his/her) genitals or pubic or rectal area/ [or] engage in lewd or lascivious behavior).

A *minor* is a person under the age of 18.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[*Lewd and lascivious behavior* includes any touching of a person with the intent to sexually arouse the perpetrator or the other person. *Lewd or lascivious behavior* includes touching any part of the person's body, either on the bare skin or through the clothes the person is wearing. [A *lewd or lascivious act* includes causing someone to touch his or her own body or someone else's body at the instigation of the perpetrator who has the required intent.]]

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New August 2009; Revised April 2010, February 2013, August 2016 [*insert date of council approval*]

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The court has a **sua sponte** duty to instruct on the good faith belief that the victim was not a minor as a defense for certain sex crimes with minors, including statutory rape, when that defense is supported by evidence. Until courts of review clarify whether this defense is available in prosecutions for violations of Pen. Code, § 288.4(a)(1), the court will have to exercise its own discretion. Suitable language for such an instruction is found in CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

**Do not** give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of the crime. (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr. 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)

Whether the defendant suffered a prior conviction for an offense listed in subsection (c) of section 290 is not an element of the offense and is subject to a severed jury trial. (Pen. Code, § 288.4(a)(2).) See CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

There is no sua sponte duty to instruct that the “motivated by” element of the offense must have been a substantial factor in its commission. (*People v. Fromuth* (2016) 2 Cal.App.5th 91, 106-109 [206 Cal.Rptr.3d 83].)

## AUTHORITY

- Elements and Enumerated Offenses ▶ Pen. Code, § 288.4.
- Lewd Defined ▶ See *In re Smith* (1972) 7 Cal.3d 362, 365 [102 Cal.Rptr. 335, 497 P.2d 807] [in context of indecent exposure]; see *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256-257, fn. 13 [158 Cal.Rptr. 330, 599 P.2d 636].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 66, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.21 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

**1126. Going to Meeting With Minor for Lewd Purpose (Pen. Code, § 288.4(b))**

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The defendant is charged [in Count \_\_] with going to a meeting with a minor for a lewd purpose [in violation of Penal Code section 288.4(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant arranged a meeting with (a minor/ [or] a person (he/she) believed to be a minor);
2. When the defendant did so, (he/she) was motivated by an unnatural or abnormal sexual interest in children;
3. At that meeting, the defendant intended to (expose (his/her) genitals or pubic or rectal area/ [or] have the minor expose (his/her) genitals or pubic or rectal area/ [or] engage in lewd or lascivious behavior);

**AND**

4. The defendant went to the arranged meeting place at or about the arranged time.

*<Give the bracketed language at the beginning of the following sentence if instructing on other offenses mentioning children for which the definition given here does not apply.>*

**[For the purposes of this instruction,] (A/a) child or minor is a person under the age of 18.**

**[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]**

**[Lewd and lascivious behavior includes any touching of a person with the intent to sexually arouse the perpetrator or the other person. Lewd or lascivious behavior includes touching any part of the person's body, either on the bare skin or through the clothes the person is wearing. [A lewd or lascivious act includes causing someone to touch his or her own body or someone else's body at the instigation of the perpetrator who has the required intent.]]**

## BENCH NOTES

### ***Instructional Duty***

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

**Do not** give CALCRIM No. 370, *Motive*, with this instruction because motive is an element of the crime. (*People v. Valenti* (2016) 243 Cal.App.4th 1140, 1165 [197 Cal.Rptr. 317]; *People v. Maurer* (1995) 32 Cal.App.4th 1121, 1126–1127 [38 Cal.Rptr.2d 335].)

It is unclear how violations of Pen. Code, § 288.4(b), which involve actually going to an arranged meeting, correlate to violations of Pen. Code, § 288.4(a) (cf. CALCRIM No. 1125, *Arranging Meeting With Minor for Lewd Purpose*). Violations of section 288.4(a) may be lesser included offenses of violations of section 288.4(b). In the alternative, a violation of section 288.4(b) could be characterized as sentence enhancement of a violation of section 288.4(a). This matter must be left to the trial court’s discretion until courts of review provide guidance.

The court has a **sua sponte** duty to instruct on the good faith belief that the victim was not a minor as a defense for certain sex crimes with minors, including statutory rape, when that defense is supported by evidence. Until courts of review clarify whether this defense is available in prosecutions for violations of Pen. Code, § 288.4(b), the court will have to exercise its own discretion. Suitable language for such an instruction is found in CALCRIM No. 1070, *Unlawful Sexual Intercourse: Defendant 21 or Older*.

There is no sua sponte duty to instruct that the “motivated by” element of the offense must have been a substantial factor in its commission. (*People v. Fromuth* (2016) 2 Cal.App.5th 91, 106-109 [206 Cal.Rptr.3d 83].)

## AUTHORITY

- Elements and Enumerated Offenses ▶ Pen. Code, § 288.4.

- Lewd Defined ▶ See *In re Smith* (1972) 7 Cal.3d 362, 365 [102 Cal.Rptr. 335, 497 P.2d 807] [in context of indecent exposure]; see *Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256-257, fn. 13 [158 Cal.Rptr. 330, 599 P.2d 636].
- Calculating Age ▶ Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849-850 [21 Cal.Rptr.2d 373, 855 P.2d 391].
- Meaning of Child and Minor ▶ *People v. Yuksel* (2012) 207 Cal.App.4th 850, 854855 [143 Cal.Rptr.3d 823].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 66, 178.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.21 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

**1202. Kidnapping: For Ransom, Reward, or Extortion (Pen. Code, § 209(a))**

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The defendant is charged [in Count \_\_] with kidnapping for the purpose of (ransom[,]/ [or] reward[,]/ [or] extortion) [that resulted in (death[,]/ [or] bodily harm[,]/ [or] exposure to a substantial likelihood of death)] [in violation of Penal Code section 209(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed) another person;

*<Alternative 2A—held or detained>*

2. The defendant held or detained the other person;

*<Alternative 2B—intended to hold or detain that person>*

2. When the defendant acted, (he/she) intended to hold or detain the other person;

3. The defendant did so (for ransom[,]/ [or] for reward[,]/ [or] to commit extortion[,]/ [or] to get money or something valuable);

[AND]

4. The other person did not consent to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed)(;/.)

*<Give element 5 if instructing on reasonable belief in consent>*

[AND]

5. The defendant did not actually and reasonably believe that the other person consented to being (kidnapped[,]/ [or] abducted[,]/ [or] seized[,]/ [or] confined[,]/ [or] concealed[,]/ [or] carried away[,]/ [or] inveigled[,]/ [or] enticed[,]/ [or] decoyed).

[It is not necessary that the person be moved for any distance.]

**[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]**

*<Defense: Good Faith Belief in Consent>*

**[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the other person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]**

*<Defense: Consent Given>*

**[The defendant is not guilty of kidnapping if the other person consented to go with the defendant. The other person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient mental capacity to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the other person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]**

**[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the other person withdrew consent, the defendant committed the crime as I have defined it.]**

**[Someone intends to commit *extortion* if he or she intends to: (1) obtain a person's property with the person's consent and (2) obtain the person's consent through the use of force or fear.]**

**[Someone intends to commit *extortion* if he or she: (1) intends to get a public official to do an official act and (2) uses force or fear to make the official do the act.] [An *official act* is an act that a person does in his or her official capacity using the authority of his or her public office.]**

*<Sentencing Factor>*

**[If you find the defendant guilty of kidnapping for (ransom [,]/ [or] reward[,]/ [or] extortion), you must then decide whether the People have proved the additional allegation that the defendant (caused the kidnapped person to (die/suffer bodily harm)/ [or] intentionally confined the kidnapped person in a way that created a substantial risk-likelihood of death).**

**[Bodily harm means any substantial physical injury resulting from the use of force that is more than the force necessary to commit kidnapping.]**

**[The defendant caused \_\_\_\_\_’s <insert name of allegedly kidnapped person> (death/bodily harm) if:**

- 1. A reasonable person in the defendant’s position would have foreseen that the defendant’s use of force or fear could begin a chain of events likely to result in \_\_\_\_\_’s <insert name of allegedly kidnapped person> (death/bodily harm);**
- 2. The defendant’s use of force or fear was a direct and substantial factor in causing \_\_\_\_\_’s <insert name of allegedly kidnapped person> (death/bodily harm);**

**AND**

- 3. \_\_\_\_\_’s <insert name of allegedly kidnapped person> (death/bodily harm) would not have happened if the defendant had not used force or fear to hold or detain \_\_\_\_\_ <insert name of allegedly kidnapped person>.**

**A substantial factor is more than a trivial or remote factor. However, it need not have been the only factor that caused \_\_\_\_\_’s <insert name of allegedly kidnapped person> (death/bodily harm).]**

**The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.]**

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*New January 2006; Revised April 2011, February 2015*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)), the court has a **sua sponte** duty to instruct on the sentencing factor. (See *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762] [bodily harm

defined]); see also *People v. Ryan* (1999) 76 Cal.App.4th 1304, 1318 [76 Cal.Rptr.2d 160] [court must instruct on general principles of law relevant to issues raised by the evidence].) The court must also give the jury a verdict form on which the jury can indicate whether this allegation has been proved. If causation is an issue, the court has a **sua sponte** duty to give the bracketed section that begins “The defendant caused.” (See Pen. Code, § 209(a); *People v. Monk* (1961) 56 Cal.2d 288, 296 [14 Cal.Rptr. 633, 363 P.2d 865]; *People v. Reed* (1969) 270 Cal.App.2d 37, 48–49 [75 Cal.Rptr. 430].)

Give the bracketed definition of “consent” on request.

Give alternative 2A if the evidence supports the conclusion that the defendant actually held or detained the alleged victim. Otherwise, give alternative 2B. (See Pen. Code, § 209(a).)

“Extortion” is defined in Penal Code section 518. If the kidnapping was for purposes of extortion, give one of the bracketed definitions of extortion on request. Give the second definition if the defendant is charged with intending to extort an official act. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141] [defining “official act”].) Extortion may also be committed by using “the color of official right” to make an official do an act. (Pen. Code, § 518; see *Evans v. United States* (1992) 504 U.S. 255, 258 [112 S.Ct. 1881, 119 L.Ed.2d 57]; *McCormick v. United States* (1990) 500 U.S. 257, 273 [111 S.Ct. 1807, 114 L.Ed.2d 307] [both discussing common law definition].) It appears that this type of extortion rarely occurs in the context of kidnapping, so it is excluded from this instruction.

### ***Defenses—Instructional Duty***

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) Give the bracketed paragraph on the defense of consent. On request, if supported by the evidence, also give the bracketed paragraph that begins with “Consent may be withdrawn.” (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The defendant’s reasonable and actual belief in the victim’s consent to go with the defendant may be a defense. (See *People v. Greenberger* (1997) 58 Cal.App.4th

298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].)

### ***Related Instructions***

For the elements of extortion, see CALCRIM No. 1830, *Extortion by Threat or Force*.

## **AUTHORITY**

- Elements ▶ Pen. Code, § 209(a).
- Requirement of Lack of Consent ▶ *People v. Eid* (2010) 187 Cal.App.4th 859, 878 [114 Cal.Rptr.3d 520].
- Extortion ▶ Pen. Code, § 518; *People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628]; see *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1229–1230 [277 Cal.Rptr. 382].
- Amount of Physical Force Required ▶ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59 [43 Cal.Rptr.2d 434]; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686 [168 Cal.Rptr. 762].
- Bodily Injury Defined ▶ *People v. Chacon* (1995) 37 Cal.App.4th 52, 59; *People v. Schoenfeld* (1980) 111 Cal.App.3d 671, 685–686; see *People v. Reed* (1969) 270 Cal.App.2d 37, 48–50 [75 Cal.Rptr. 430] [injury reasonably foreseeable from defendant’s act].
- Control Over Victim When Intent Formed ▶ *People v. Martinez* (1984) 150 Cal.App.3d 579, 600–602 [198 Cal.Rptr. 565] [disapproved on other ground in *People v. Hayes* (1990) 52 Cal.3d 577, 627–628, fn. 10 [276 Cal.Rptr. 874, 802 P.2d 376].]
- No Asportation Required ▶ *People v. Macinnes* (1973) 30 Cal.App.3d 838, 844 [106 Cal.Rptr. 589]; see *People v. Rayford* (1994) 9 Cal.4th 1, 11–12, fn. 8 [36 Cal.Rptr.2d 317, 884 P.2d 1369]; *People v. Ordonez* (1991) 226 Cal.App.3d 1207, 1227 [277 Cal.Rptr. 382].
- Official Act Defined ▶ *People v. Mayfield* (1997) 14 Cal.4th 668, 769–773 [60 Cal.Rptr.2d 1, 928 P.2d 485]; *People v. Norris* (1985) 40 Cal.3d 51, 55–56 [219 Cal.Rptr. 7, 706 P.2d 1141].

### ***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 301–302.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

## COMMENTARY

A trial court may refuse to define “reward.” There is no need to instruct a jury on the meaning of terms in common usage. Reward means something given in return for good or evil done or received, and especially something that is offered or given for some service or attainment. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 367–368 [68 Cal.Rptr.2d 61].) In the absence of a request, there is also no duty to define “ransom.” The word has no statutory definition and is commonly understood by those familiar with the English language. (*People v. Hill* (1983) 141 Cal.App.3d 661, 668 [190 Cal.Rptr. 628].)

## LESSER INCLUDED OFFENSES

- False Imprisonment ▶ Pen. Code, §§ 236, 237; *People v. Chacon* (1995) 37 Cal.App.4th 52, 65 [43 Cal.Rptr.2d 434]; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866].
- Extortion ▶ Pen. Code, § 518.
- Attempted Extortion ▶ Pen. Code, §§ 664, 518.
- Multiple Convictions of Lesser Included Offenses of Pen. Code, § 209(a)  
Possible ▶ *People v. Eid* (2014) 59 Cal.4th 650, 655–658 [174 Cal.Rptr.3d 82, 328 P.3d 69].

If the prosecution alleges that the kidnapping resulted in death or bodily harm, or exposed the victim to a substantial likelihood of death (see Pen. Code, § 209(a)), then kidnapping for ransom without death or bodily harm is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the allegation has been proved.

Simple kidnapping under section 207 of the Penal Code is not a lesser and necessarily included offense of kidnapping for ransom, reward, or extortion. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 368, fn. 56 [68 Cal.Rptr.2d 61] [kidnapping for ransom can be accomplished without asportation while simple kidnapping cannot]; see *People v. Macinnes* (1973) 30 Cal.App.3d 838, 843–844 [106 Cal.Rptr. 589]; *People v. Bigelow* (1984) 37 Cal.3d 731, 755, fn. 14 [209 Cal.Rptr. 328, 691 P.2d 994].)

## RELATED ISSUES

### ***Extortion Target***

The kidnapped victim may also be the person from whom the defendant wishes to extort something. (*People v. Ibrahim* (1993) 19 Cal.App.4th 1692, 1696–1698 [24 Cal.Rptr.2d 269].)

### ***No Good-Faith Exception***

A good faith exception to extortion or kidnapping for ransom does not exist. Even actual debts cannot be collected by the reprehensible and dangerous means of abducting and holding a person to be ransomed by payment of the debt. (*People v. Serrano* (1992) 11 Cal.App.4th 1672, 1677–1678 [15 Cal.Rptr.2d 305].)

**1301. Stalking (Pen. Code, § 646.9(a), (e)–(h))**

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The defendant is charged [in Count \_\_\_] with stalking [in violation of Penal Code section 646.9].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully and maliciously harassed or willfully, maliciously, and repeatedly followed another person;

[AND]

2. The defendant made a credible threat with the intent to place the other person in reasonable fear for (his/her) safety [or for the safety of (his/her) immediate family]~~(;/.)~~

*<Give element 3 if the defendant is charged with stalking in violation of a court order, Pen. Code, § 646.9(b).>*

[AND]

- ~~3. A/an (temporary restraining order/injunction/\_\_\_\_\_ <describe other court order>) prohibiting the defendant from engaging in this conduct against the threatened person was in effect at the time of the conduct.]~~

*<If a court order prohibiting defendant's contact with the threatened person was in effect at the time of the charged conduct, give the following two paragraphs>*  
**[If you find the defendant guilty of stalking [in Count[s] ], you must then decide whether the People have proved that a/an (temporary restraining order/injunction/\_\_\_\_\_ <describe other court order>) prohibiting the defendant from engaging in this conduct against the threatened person was in effect at the time of the conduct.]**

**The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.]**

**A *credible threat* is one that causes the target of the threat to reasonably fear for his or her safety [or for the safety of his or her immediate family] and one that the maker of the threat appears to be able to carry out.**

**A *credible threat* may be made orally, in writing, or electronically or may be implied by a pattern of conduct or a combination of statements and conduct.**

***Harassing* means engaging in a knowing and willful *course of conduct* directed at a specific person that seriously annoys, alarms, torments, or terrorizes the person and that serves no legitimate purpose.**

**A *course of conduct* means two or more acts occurring over a period of time, however short, demonstrating a continuous purpose.**

**[A person is not guilty of stalking if (his/her) conduct is constitutionally protected activity. \_\_\_\_\_ <Describe type of activity; see Bench Notes below> is constitutionally protected activity. ]**

**Someone commits an act *willfully* when he or she does it willingly or on purpose.**

**Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, annoy, or injure someone else.**

**[*Repeatedly* means more than once.]**

**[The People do not have to prove that a person who makes a threat intends to actually carry it out.]**

**[Someone who makes a threat while in prison or jail may still be guilty of stalking.]**

**[A threat may be made electronically by using a telephone, cellular telephone, pager, computer, video recorder, fax machine, or other similar electronic communication device.]**

**[*Immediate family* means (a) any spouse, parents, and children; (b) any grandchildren, grandparents, brothers, and sisters related by blood or marriage; or (c) any person who regularly lives in the other person's household [or who regularly lived there within the prior six months].]**

**[The terms and conditions of (a/an) (restraining order/injunction/\_\_\_\_\_ <describe other court order>) remain enforceable despite the parties' actions, and may only be changed by court order.]**

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*New January 2006; Revised April 2010*

## **BENCH NOTES**

### ***Instructional Duty***

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Give element 3 if the defendant is charged with stalking in violation of a temporary restraining order, injunction, or any other court order. (See Pen. Code, § 646.9(b).)

If there is substantial evidence that any of the defendant's conduct was constitutionally protected, instruct on the type of constitutionally protected activity involved. (See the optional bracketed paragraph regarding constitutionally protected activity.) Examples of constitutionally protected activity include speech, protest, and assembly. (See Civ. Code, § 1708.7(f) [civil stalking statute].)

The bracketed sentence that begins with "The People do not have to prove that" may be given on request. (See Pen. Code, § 646.9(g).)

The bracketed sentence about the defendant's incarceration may be given on request if the defendant was in prison or jail when the threat was made. (See Pen. Code, § 646.9(g).)

Give the bracketed definition of "electronic communication" on request. (See Pen. Code, § 422; 18 U.S.C., § 2510(12).)

If there is evidence that the threatened person feared for the safety of members of his or her immediate family, give the bracketed paragraph defining "immediate family" on request. (See Pen. Code, § 646.9(l); see Fam. Code, § 6205; Prob. Code, §§ 6401, 6402.)

If the defendant argues that the alleged victim acquiesced to contact with the defendant contrary to a court order, the court may, on request, give the last bracketed paragraph stating that such orders may only be changed by the court. (See Pen. Code, § 13710(b); *People v. Gams* (1996) 52 Cal.App.4th 147, 151–152, 154–155 [60 Cal.Rptr.2d 423].)

## AUTHORITY

- Elements ▶ Pen. Code, § 646.9(a), (e)–(h); *People v. Ewing* (1999) 76 Cal.App.4th 199, 210 [90 Cal.Rptr.2d 177]; *People v. Norman* (1999) 75 Cal.App.4th 1234, 1239 [89 Cal.Rptr.2d 806].
- Intent to Cause Victim Fear ▶ *People v. Falck* (1997) 52 Cal.App.4th 287, 295, 297–298 [60 Cal.Rptr.2d 624]; *People v. Carron* (1995) 37 Cal.App.4th 1230, 1236, 1238–1240 [44 Cal.Rptr.2d 328]; see *People v. McCray* (1997) 58 Cal.App.4th 159, 171–173 [67 Cal.Rptr.2d 872] [evidence of past violence toward victim].
- Repeatedly Defined ▶ *People v. Heilman* (1994) 25 Cal.App.4th 391, 399, 400 [30 Cal.Rptr.2d 422].
- Safety Defined ▶ *People v. Borrelli* (2000) 77 Cal.App.4th 703, 719–720 [91 Cal.Rptr.2d 851]; see *People v. Falck* (1997) 52 Cal.App.4th 287, 294–295 [60 Cal.Rptr.2d 624].
- Substantial Emotional Distress Defined ▶ *People v. Ewing* (1999) 76 Cal.App.4th 199, 210 [90 Cal.Rptr.2d 177]; see *People v. Carron* (1995) 37 Cal.App.4th 1230, 1240–1241 [44 Cal.Rptr.2d 328].
- Victim’s Fear Not Contemporaneous With Stalker’s Threats ▶ *People v. Norman* (1999) 75 Cal.App.4th 1234, 1239–1241 [89 Cal.Rptr.2d 806].
- Subsections (b) & (c) of Pen. Code, § 646.9 are Alternate Penalty Provisions ▶ *People v. Muhammad* (2007) 157 Cal.App.4<sup>th</sup> 484, 494 [68 Cal.Rptr.3d 695].
- This Instruction Upheld ▶ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1195–1197 [67 Cal.Rptr.3d 871].

### *Secondary Sources*

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, §§ 294–297.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.11A[2] (Matthew Bender).

## LESSER INCLUDED OFFENSES

- Attempted Stalking ▶ Pen. Code, §§ 664, 646.9.

## RELATED ISSUES

### ***Harassment Not Contemporaneous With Fear***

The harassment need not be contemporaneous with the fear caused. (See *People v. Norman* (1999) 75 Cal.App.4th 1234, 1239–1241 [89 Cal.Rptr.2d 806].)

### ***Constitutionality of Terms***

The term “credible threat” is not unconstitutionally vague. (*People v. Halgren* (1996) 52 Cal.App.4th 1223, 1230 [61 Cal.Rptr.2d 176].) The element that the objectionable conduct “serve[] no legitimate purpose” (Pen. Code, § 646.9(e) is also not unconstitutionally vague; “an ordinary person can reasonably understand what conduct is expressly prohibited.” (*People v. Tran* (1996) 47 Cal.App.4th 253, 260 [54 Cal.Rptr.2d 650].)

### ***Labor Picketing***

Section 646.9 does not apply to conduct that occurs during labor picketing. (Pen. Code, § 646.9(i).)

**1502. Arson: Inhabited Structure or Property (Pen. Code, § 451(b))**

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**The defendant is charged [in Count \_\_] with arson that burned an inhabited structure or inhabited property [in violation of Penal Code section 451(b)].**

**To prove that the defendant is guilty of this crime, the People must prove that:**

- 1. The defendant set fire to or burned [or (counseled[,]/ [or] helped[,]/ [or] caused) the burning of] (a structure/[or] property);**
- 2. (He/She) acted willfully and maliciously;**

**AND**

- 3. The fire burned an inhabited structure or inhabited property.**

**To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.**

**Someone commits an act *willfully* when he or she does it willingly or on purpose.**

**Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.**

**A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent.)**

**A structure or property is *inhabited* if someone lives there and either is present or has left but intends to return. An inhabited structure or property does not include the land on which it is located.**

**[*Property* means personal property or land other than forest land.]**

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*New January 2006; Revised February 2013, August 2016 [\[insert date of council approval\]](#)*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

### *Related Instructions*

If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

## AUTHORITY

- Elements ▶ Pen. Code, § 451(b).
- Inhabited Defined ▶ Pen. Code, § 450; *People v. Jones* (1988) 199 Cal.App.3d 543 [245 Cal.Rptr. 85].
- Inhabitant Must Be Alive at Time of Arson ▶ *People v. Vang* (2016) 1 Cal.App.5th 377, 382-387 [204 Cal.Rptr.3d 455]. [
- Structure and Maliciously Defined ▶ Pen. Code, § 450.
- To Burn Defined ▶ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

### *Secondary Sources*

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Property, §§ 268-276.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.47[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

## LESSER INCLUDED OFFENSES

- Arson ▶ Pen. Code, § 451.
- Attempted Arson ▶ Pen. Code, § 455.
- Unlawfully Causing a Fire ▶ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12

Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

## RELATED ISSUES

### *Inhabited Apartment*

Defendant's conviction for arson of an inhabited structure was proper where he set fire to his estranged wife's apartment several days after she had vacated it. Although his wife's apartment was not occupied, it was in a large apartment building where many people lived; it was, therefore, occupied for purposes of the arson statute. (*People v. Green* (1983) 146 Cal.App.3d 369, 378–379 [194 Cal.Rptr. 128].)

**1503–1514. Reserved for Future Use**

## 1600. Robbery (Pen. Code, § 211)

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The defendant is charged [in Count \_\_\_\_\_] with robbery [in violation of Penal Code section 211].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took property that was not (his/her) own;
2. The property was in the possession of another person;
3. The property was taken from the other person or (his/her) immediate presence;
4. The property was taken against that person's will;
5. The defendant used force or fear to take the property or to prevent the person from resisting;

AND

6. When the defendant used force or fear ~~to take the property~~, (he/she) intended (to deprive the owner of ~~it~~ the property permanently/ [or] to remove ~~it~~ the property from the owner's possession for so extended a period of time that the owner would be deprived of a major portion of the value or enjoyment of the property).

The defendant's intent to take the property must have been formed before or during the time (he/she) used force or fear. If the defendant did not form this required intent until after using the force or fear, then (he/she) did not commit robbery.

*<Give the following bracketed paragraph if the second degree is the only possible degree of the charged crime for which the jury may return a verdict.>*

**[If you find the defendant guilty of robbery, it is robbery of the second degree.]**

**[A person *takes* something when he or she gains possession of it and moves it some distance. The distance moved may be short.]**

[The property taken can be of any value, however slight.] [Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[A (store/ [or] business) (employee/ \_\_\_\_\_ <insert description>) who is on duty has possession of the (store/ [or] business) owner's property.]

[*Fear*, as used here, means fear of (injury to the person himself or herself[,]/ [or] injury to the person's family or property[,]/ [or] immediate injury to someone else present during the incident or to that person's property).]

[Property is within a person's *immediate presence* if it is sufficiently within his or her physical control that he or she could keep possession of it if not prevented by force or fear.]

[An act is done *against a person's will* if that person does not consent to the act. In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

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*New January 2006; Revised August 2009, October 2010, April 2011, August 2013, August 2014*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

To have the requisite intent for theft, the defendant must either intend to deprive the owner permanently or to deprive the owner of a major portion of the property's value or enjoyment. (See *People v. Avery* (2002) 27 Cal.4th 49, 57–58 [115 Cal.Rptr.2d 403, 38 P.3d 1].) Select the appropriate language in element 5.

There is no *sua sponte* duty to define the terms “possession,” “fear,” and “immediate presence.” (*People v. Anderson* (1966) 64 Cal.2d 633, 639 [51 Cal.Rptr. 238, 414 P.2d 366] [fear]; *People v. Mungia* (1991) 234 Cal.App.3d

1703, 1708 [286 Cal.Rptr. 394] [fear].) These definitions are discussed in the Commentary below.

If second degree robbery is the only possible degree of robbery that the jury may return as their verdict, do not give CALCRIM No. 1602, *Robbery: Degrees*.

Give the bracketed definition of “against a person’s will” on request.

If there is an issue as to whether the defendant used force or fear during the commission of the robbery, the court may need to instruct on this point. (See *People v. Estes* (1983) 147 Cal.App.3d 23, 28 [194 Cal.Rptr. 909].) See CALCRIM No. 3261, *In Commission of Felony: Defined—Escape Rule*.

## AUTHORITY

- Elements. ▶ Pen. Code, § 211.
- Fear Defined. ▶ Pen. Code, § 212; see *People v. Cuevas* (2001) 89 Cal.App.4th 689, 698 [107 Cal.Rptr.2d 529] [victim must actually be afraid].
- Immediate Presence Defined. ▶ *People v. Hayes* (1990) 52 Cal.3d 577, 626–627 [276 Cal.Rptr. 874, 802 P.2d 376].
- Intent. ▶ *People v. Green* (1980) 27 Cal.3d 1, 52–53 [164 Cal.Rptr. 1, 609 P.2d 468], overruled on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99]; see *Rodriguez v. Superior Court* (1984) 159 Cal.App.3d 821, 826 [205 Cal.Rptr. 750] [same intent as theft].
- Intent to Deprive Owner of Main Value. ▶ See *People v. Avery* (2002) 27 Cal.4th 49, 57–58 [115 Cal.Rptr.2d 403, 38 P.3d 1] [in context of theft]; *People v. Zangari* (2001) 89 Cal.App.4th 1436, 1447 [108 Cal.Rptr.2d 250] [same].
- Possession Defined. ▶ *People v. Bekele* (1995) 33 Cal.App.4th 1457, 1461 [39 Cal.Rptr.2d 797], disapproved on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13–14 [82 Cal.Rptr.2d 413, 971 P.2d 618].
- Constructive Possession by Employee. ▶ *People v. Scott* (2009) 45 Cal.4th 743, 751 [89 Cal.Rptr.3d 213, 200 P.3d 837].
- Constructive Possession by Subcontractor/Janitor. ▶ *People v. Gilbeaux* (2003) 111 Cal.App.4th 515, 523 [3 Cal.Rptr.3d 835].
- Constructive Possession by Person With Special Relationship. ▶ *People v. Weddles* (2010) 184 Cal.App.4th 1365, 1369-1370 [109 Cal.Rptr.3d 479].

- Felonious Taking Not Satisfied by Theft by False Pretense. ▶ *People v. Williams* (2013) 57 Cal.4th 776, 784-789 [161 Cal.Rptr.3d 81, 305 P.3d 1241].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 85.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.10 (Matthew Bender).

## COMMENTARY

The instruction includes definitions of “possession,” “fear,” and “immediate presence” because those terms have meanings in the context of robbery that are technical and may not be readily apparent to jurors. (See *People v. McElheny* (1982) 137 Cal.App.3d 396, 403 [187 Cal.Rptr. 39]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221].)

Possession was defined in the instruction because either actual or constructive possession of property will satisfy this element, and this definition may not be readily apparent to jurors. (*People v. Bekele* (1995) 33 Cal.App.4th 1457, 1461 [39 Cal.Rptr.2d 797] [defining possession], disapproved on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13–14 [82 Cal.Rptr.2d 413, 971 P.2d 618]; see also *People v. Nguyen* (2000) 24 Cal.4th 756, 761, 763 [102 Cal.Rptr.2d 548, 14 P.3d 221] [robbery victim must have actual or constructive possession of property taken; disapproving *People v. Mai* (1994) 22 Cal.App.4th 117, 129 [27 Cal.Rptr.2d 141]].)

Fear was defined in the instruction because the statutory definition includes fear of injury to third parties, and this concept is not encompassed within the common understanding of fear. Force was not defined because its definition in the context of robbery is commonly understood. (See *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1709 [286 Cal.Rptr. 394] [“force is a factual question to be determined by the jury using its own common sense”].)

Immediate presence was defined in the instruction because its definition is related to the use of force and fear and to the victim’s ability to control the property. This definition may not be readily apparent to jurors.

## LESSER INCLUDED OFFENSES

- Attempted Robbery. ▶ Pen. Code, §§ 664, 211; *People v. Webster* (1991) 54 Cal.3d 411, 443 [285 Cal.Rptr. 31, 814 P.2d 1273].
- Grand Theft. ▶ Pen. Code, §§ 484, 487g; *People v. Webster, supra*, at p. 443; *People v. Ortega* (1998) 19 Cal.4th 686, 694, 699 [80 Cal.Rptr.2d 489, 968 P.2d 48]; see *People v. Cooksey* (2002) 95 Cal.App.4th 1407, 1411–1413 [116 Cal.Rptr.2d 1] [insufficient evidence to require instruction].
- Grand Theft Automobile. ▶ Pen. Code, § 487(d); *People v. Gamble* (1994) 22 Cal.App.4th 446, 450 [27 Cal.Rptr.2d 451] [construing former Pen. Code, § 487h]; *People v. Escobar* (1996) 45 Cal.App.4th 477, 482 [53 Cal.Rptr.2d 9] [same].
- Petty Theft. ▶ Pen. Code, §§ 484, 488; *People v. Covington* (1934) 1 Cal.2d 316, 320 [34 P.2d 1019].
- Petty Theft With Prior. ▶ Pen. Code, § 666; *People v. Villa* (2007) 157 Cal.App.4th 1429, 1433–1434 [69 Cal.Rptr.3d 282].

When there is evidence that the defendant formed the intent to steal after the application of force or fear, the court has a **sua sponte** duty to instruct on any relevant lesser included offenses. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1055–1057 [60 Cal.Rptr.2d 225, 929 P.2d 544] [error not to instruct on lesser included offense of theft]); *People v. Ramkeesoon* (1985) 39 Cal.3d 346, 350–352 [216 Cal.Rptr. 455, 702 P.2d 613] [same].)

On occasion, robbery and false imprisonment may share some elements (e.g., the use of force or fear of harm to commit the offense). Nevertheless, false imprisonment is not a lesser included offense, and thus the same conduct can result in convictions for both offenses. (*People v. Reed* (2000) 78 Cal.App.4th 274, 281–282 [92 Cal.Rptr.2d 781].)

## RELATED ISSUES

### *Asportation—Felonious Taking*

To constitute a taking, the property need only be moved a small distance. It does not have to be under the robber's actual physical control. If a person acting under the robber's direction, including the victim, moves the property, the element of taking is satisfied. (*People v. Martinez* (1969) 274 Cal.App.2d 170, 174 [79 Cal.Rptr. 18]; *People v. Price* (1972) 25 Cal.App.3d 576, 578 [102 Cal.Rptr. 71].)

### *Claim of Right*

If a person honestly believes that he or she has a right to the property even if that

belief is mistaken or unreasonable, such belief is a defense to robbery. (*People v. Butler* (1967) 65 Cal.2d 569, 573 [55 Cal.Rptr. 511, 421 P.2d 703]; *People v. Romo* (1990) 220 Cal.App.3d 514, 518 [269 Cal.Rptr. 440] [discussing defense in context of theft]; see CALCRIM No. 1863, *Defense to Theft or Robbery: Claim of Right*.) This defense is only available for robberies when a specific piece of property is reclaimed; it is not a defense to robberies perpetrated to settle a debt, liquidated or unliquidated. (*People v. Tufunga* (1999) 21 Cal.4th 935, 945–950 [90 Cal.Rptr.2d 143, 987 P.2d 168].)

### ***Fear***

A victim's fear may be shown by circumstantial evidence. (*People v. Davison* (1995) 32 Cal.App.4th 206, 212 [38 Cal.Rptr.2d 438].) Even when the victim testifies that he or she is not afraid, circumstantial evidence may satisfy the element of fear. (*People v. Renteria* (1964) 61 Cal.2d 497, 498–499 [39 Cal.Rptr. 213, 393 P.2d 413].)

### ***Force—Amount***

The force required for robbery must be more than the incidental touching necessary to take the property. (*People v. Garcia* (1996) 45 Cal.App.4th 1242, 1246 [53 Cal.Rptr.2d 256] [noting that force employed by pickpocket would be insufficient], disapproved on other grounds in *People v. Mosby* (2004) 33 Cal.4th 353, 365, fns. 2, 3 [15 Cal.Rptr.3d 262, 92 P.3d 841].) Administering an intoxicating substance or poison to the victim in order to take property constitutes force. (*People v. Dreas* (1984) 153 Cal.App.3d 623, 628–629 [200 Cal.Rptr. 586]; see also *People v. Wright* (1996) 52 Cal.App.4th 203, 209–210 [59 Cal.Rptr.2d 316] [explaining force for purposes of robbery and contrasting it with force required for assault].)

### ***Force—When Applied***

The application of force or fear may be used when taking the property or when carrying it away. (*People v. Cooper* (1991) 53 Cal.3d 1158, 1165, fn. 8 [282 Cal.Rptr. 450, 811 P.2d 742]; *People v. Pham* (1993) 15 Cal.App.4th 61, 65–67 [18 Cal.Rptr.2d 636]; *People v. Estes* (1983) 147 Cal.App.3d 23, 27–28 [194 Cal.Rptr. 909].)

### ***Immediate Presence***

Property that is 80 feet away or around the corner of the same block from a forcibly held victim is not too far away, as a matter of law, to be outside the victim's immediate presence. (*People v. Harris* (1994) 9 Cal.4th 407, 415–419 [37 Cal.Rptr.2d 200, 886 P.2d 1193]; see also *People v. Prieto* (1993) 15 Cal.App.4th 210, 214 [18 Cal.Rptr.2d 761] [reviewing cases where victim is distance away from property taken].) Property has been found to be within a person's immediate presence when the victim is lured away from his or her property and force is

subsequently used to accomplish the theft or escape (*People v. Webster* (1991) 54 Cal.3d 411, 440–442 [285 Cal.Rptr. 31, 814 P.2d 1273]) or when the victim abandons the property out of fear (*People v. Dominguez* (1992) 11 Cal.App.4th 1342, 1348–1349 [15 Cal.Rptr.2d 46].)

### ***Multiple Victims***

Multiple counts of robbery are permissible when there are multiple victims even if only one taking occurred. (*People v. Ramos* (1982) 30 Cal.3d 553, 589 [180 Cal.Rptr. 266, 639 P.2d 908], reversed on other grounds *California v. Ramos* (1983) 463 U.S. 992 [103 S.Ct. 3446, 77 L.Ed.2d 1171]; *People v. Miles* (1996) 43 Cal.App.4th 364, 369, fn. 5 [51 Cal.Rptr.2d 87] [multiple punishment permitted].) Conversely, a defendant commits only one robbery, no matter how many items are taken from a single victim pursuant to a single plan. (*People v. Brito* (1991) 232 Cal.App.3d 316, 325–326, fn. 8 [283 Cal.Rptr. 441].)

### ***Value***

The property taken can be of small or minimal value. (*People v. Simmons* (1946) 28 Cal.2d 699, 705 [172 P.2d 18]; *People v. Thomas* (1941) 45 Cal.App.2d 128, 134–135 [113 P.2d 706].) The property does not have to be taken for material gain. All that is necessary is that the defendant intended to permanently deprive the person of the property. (*People v. Green* (1980) 27 Cal.3d 1, 57 [164 Cal.Rptr. 1, 609 P.2d 468], disapproved on other grounds in *People v. Hall* (1986) 41 Cal.3d 826, 834, fn. 3 [226 Cal.Rptr. 112, 718 P.2d 99].)

## 1650. Carjacking (Pen. Code, § 215)

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The defendant is charged [in Count \_\_\_] with carjacking [in violation of Penal Code section 215].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took a motor vehicle that was not (his/her) own;
2. The vehicle was taken from the immediate presence of a person who possessed the vehicle or was its passenger;
3. The vehicle was taken against that person's will;
4. The defendant used force or fear to take the vehicle or to prevent that person from resisting;

AND

5. When the defendant used force or fear to take the vehicle, (he/she) intended to deprive the other person of possession of the vehicle either temporarily or permanently.

The defendant's intent to take the vehicle must have been formed before or during the time (he/she) used force or fear. If the defendant did not form this required intent until after using the force or fear, then (he/she) did not commit carjacking.

[A motor vehicle includes a (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/\_\_\_\_\_ <insert other type of motor vehicle>).]

[The term motor vehicle is defined in another instruction to which you should refer.]

A person *takes* something when he or she gains possession of it and moves it some distance. The distance moved may be short.

[An act is done *against a person's will* if that person does not consent to the act. In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[*Fear*, as used here, means fear of (injury to the person himself or herself[,]/ [or] injury to the person's family or property[,]/ [or] immediate injury to someone else present during the incident or to that person's property).]

[A vehicle is within a person's *immediate presence* if it is sufficiently within his or her control so that he or she could keep possession of it if not prevented by force or fear.]

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*New January 2006*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

There is no sua sponte duty to define the terms “possession,” “fear,” and “immediate presence.” (*People v. Anderson* (1966) 64 Cal.2d 633, 639 [414 P.2d 366, 51 Cal.Rptr. 238] [fear]; *People v. Mungia* (1991) 234 Cal.App.3d 1703, 1708 [286 Cal.Rptr. 394] [fear].) These definitions are discussed in the Commentary to CALCRIM No. 1600, *Robbery*.

Give the bracketed definition of “against a person's will” on request.

## AUTHORITY

- Elements ▶ Pen. Code, § 215.
- Fear Defined ▶ Pen. Code, § 212.
- Motor Vehicle Defined ▶ Veh. Code, § 415.

- Immediate Presence Defined ▶ *People v. Hayes* (1990) 52 Cal.3d 577, 626–627 [276 Cal.Rptr. 874, 802 P.2d 376]; *People v. Medina* (1995) 39 Cal.App.4th 643, 650 [46 Cal.Rptr.2d 112].
- Possession Defined ▶ *People v. Bekele* (1995) 33 Cal.App.4th 1457, 1461 [39 Cal.Rptr.2d 797], disapproved on other grounds in *People v. Rodriguez* (1999) 20 Cal.4th 1, 13-14 [82 Cal.Rptr.2d 413, 971 P.2d 618]; see *People v. Hamilton* (1995) 40 Cal.App.4th 1137, 1143–1144 [47 Cal.Rptr.2d 343].
- Carjacking Crime Against Possession, not Ownership, of Vehicle ▶ *People v. Cabrera* (2007) 152 Cal.App.4th 695, 701–702 [61 Cal.Rptr.3d 373].

### *Secondary Sources*

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 101.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.10[2][b], 142.10A (Matthew Bender).

## **LESSER INCLUDED OFFENSES**

- Attempted Carjacking ▶ Pen. Code, §§ 663, 215; see *People v. Jones* (1999) 75 Cal.App.4th 616, 628 [89 Cal.Rptr.2d 485].

Neither theft or robbery is a necessarily included offense of carjacking. (*People v. Ortega* (1998) 19 Cal.4th 686, 693 [80 Cal.Rptr.2d 489, 968 P.2d 48] [theft]; *People v. Dominguez* (1995) 38 Cal.App.4th 410, 419 [45 Cal.Rptr.2d 153] [robbery].) Vehicle theft (Veh. Code, § 10851(a)) is not a lesser included offense of carjacking. (*People v. Montoya* (2004) 33 Cal.4th 1031, 1035 [16 Cal.Rptr.3d 902, 94 P.3d 1098].)

Attempted grand theft auto is not a lesser included offense of attempted carjacking. *People v. Marquez* (2007) 152 Cal.App.4th 1064, 1066 [62 Cal.Rptr.3d 31].

## **RELATED ISSUES**

### ***Force—Timing***

Force or fear must be used against the victim to gain possession of the vehicle. The timing, however, “in no way depends on whether the confrontation and use of

force or fear occurs before, while, or after the defendant initially takes possession of the vehicle.” (*People v. O’Neil* (1997) 56 Cal.App.4th 1126, 1133 [66 Cal.Rptr.2d 72].)

***Asportation—Felonious Taking***

“Felonious taking” has the same meaning in carjacking as in robbery. (*People v. Lopez* (2003) 31 Cal.4th 1051, 1062 [6 Cal.Rptr.3d 432, 79 P.3d 548]) “To satisfy the asportation requirement for robbery, no great movement is required, and it is not necessary that the property be taken out of the physical presence of the victim. [S]light movement is enough to satisfy the asportation requirement. (*Id.* at p. 1061 [internal quotation marks and citations omitted].) The taking can occur whether or not the victim remains with the car. (*People v. Duran* (2001) 88 Cal.App.4th 1371, 1375–1377 [106 Cal.Rptr.2d 812].) Carjacking can also occur when a defendant forcibly takes a victim’s car keys, not just when a defendant takes a car from the victim’s presence. (*People v. Hoard* (2002) 103 Cal.App.4th 599, 608–609 [126 Cal.Rptr.2d 855] [although victim was not physically present in the parking lot when defendant drove the car away, she had been forced to relinquish her car keys].)

**1651–1699. Reserved for Future Use**

## 2130. Refusal—Consciousness of Guilt (Veh. Code, § 23612)

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The law requires that any driver who has been [lawfully] arrested submit to a chemical test at the request of a peace officer who has reasonable cause to believe that the person arrested was driving under the influence.

*<Give for refusal by words or conduct>*

**[If the defendant refused to submit after a peace officer asked (him/her) to do so and explained the test's nature to the defendant, then the defendant's conduct may show that (he/she) was aware of (his/her) guilt. If you conclude that the defendant refused to submit to such a test, it is up to you to decide the meaning and importance of the refusal. However, evidence that the defendant refused to submit to ~~such a~~ chemical test cannot prove guilt by itself.]**

*<Give for refusal by silence>*

**[A defendant's silence in response to an officer's request to (submit to a chemical test/ [or] complete a chemical test) may be a refusal. If you conclude that the defendant's silence was a refusal, it is up to you to decide its meaning and importance. However, evidence that the defendant refused to submit to a chemical test cannot prove guilt by itself.]**

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*New January 2006; Revised August 2009 [insert date of council approval]*

### BENCH NOTES

#### *Instructional Duty*

The court may instruct the jury that refusal to submit to a chemical analysis for blood alcohol content may demonstrate consciousness of guilt. (*People v. Sudduth* (1966) 65 Cal.2d 543, 547 [55 Cal.Rptr. 393, 421 P.2d 401].) There is no sua sponte duty to give this instruction.

Do not give this instruction if the defendant is exempted from the implied consent law because the defendant has hemophilia or is taking anticoagulants. (See Veh. Code, § 23612(b) & (c).)

The implied consent statute states that “[t]he testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.” (Veh. Code, § 23612(a)(1)(C).) If there is a factual issue as to whether the defendant was lawfully arrested or whether the officer had reasonable cause to believe the defendant was under the influence, the court should consider

whether this entire instruction, or the bracketed word “lawfully” is appropriate and/or whether the jury should be instructed on these additional issues. For an instruction on lawful arrest and reasonable cause, see CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

## AUTHORITY

- Implied Consent Statute ▶ Veh. Code, § 23612.
- [Instruction Constitutional](#) ▶ *People v. Sudduth* (1966) 65 Cal.2d 543, 547 [55 Cal.Rptr. 393, 421 P.2d 401].
- [Silence in Response to Request May Constitute Refusal](#) ▶ *Garcia v. Department of Motor Vehicles* (2010) 185 Cal.App.4th 73, 82-84 [109 Cal.Rptr.3d 906].

## Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 226–235.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02[2][f] (Matthew Bender).

## RELATED ISSUES

### *Silence*

Silence in response to repeated requests to submit to a chemical analysis constitutes a refusal. (*Lampman v. Dept. of Motor Vehicles* (1972) 28 Cal.App.3d 922, 926 [105 Cal.Rptr. 101].)

### *Inability to Complete Chosen Test*

If the defendant selects one test but is physically unable to complete that test, the defendant’s refusal to submit to an alternative test constitutes a refusal. (*Cahall v. Dept. of Motor Vehicles* (1971) 16 Cal.App.3d 491, 496 [94 Cal.Rptr. 182]; *Kessler v. Dept. of Motor Vehicles* (1992) 9 Cal.App.4th 1134, 1139 [12 Cal.Rptr.2d 46].)

### *Conditions Placed on Test by Defendant*

“It is established that a *conditional* consent to a test constitutes a refusal to submit to a test within the meaning of section 13353.” (*Webb v. Miller* (1986) 187

Cal.App.3d 619, 626 [232 Cal.Rptr. 50] [request by defendant to see chart in wallet constituted refusal, italics in original]; *Covington v. Dept. of Motor Vehicles* (1980) 102 Cal.App.3d 54, 57 [162 Cal.Rptr. 150] [defendant's response that he would only take test with attorney present constituted refusal].) However, in *Ross v. Dept. of Motor Vehicles* (1990) 219 Cal.App.3d 398, 402–403 [268 Cal.Rptr. 102], the court held that the defendant was entitled under the implied consent statute to request to see the identification of the person drawing his blood. The court found the request reasonable in light of the risks of HIV infection from improper needle use. (*Id.* at p. 403.) Thus, the defendant could not be penalized for refusing to submit to the test when the technician declined to produce identification. (*Ibid.*)

#### ***Defendant Consents After Initial Refusal***

“Once the driver refuses to take any one of the three chemical tests, the law does not require that he later be given one when he decides, for whatever reason, that he is ready to submit. [Citations.] [¶] . . . Simply stated, one offer plus one rejection equals one refusal; and, one suspension.” (*Dunlap v. Dept. of Motor Vehicles* (1984) 156 Cal.App.3d 279, 283 [202 Cal.Rptr. 729].)

#### ***Defendant Refuses Request for Urine Sample Following Breath Test***

In *People v. Roach* (1980) 108 Cal.App.3d 891, 893 [166 Cal.Rptr. 801], the defendant submitted to a breath test revealing a blood alcohol level of 0.08 percent. The officer then asked the defendant to submit to a urine test in order to detect the presence of drugs, but the defendant refused. (*Ibid.*) The court held that this was a refusal under the implied consent statute. (*Ibid.*)

#### ***Sample Taken by Force After Refusal***

“[T]here was no voluntary submission on the part of respondent to any of the blood alcohol tests offered by the arresting officer. The fact that a blood sample ultimately was obtained and the test completed is of no significance.” (*Cole v. Dept. of Motor Vehicles* (1983) 139 Cal.App.3d 870, 875 [189 Cal.Rptr. 249].)

#### ***Refusal Admissible Even If Faulty Admonition***

Vehicle Code section 23612 requires a specific admonition to the defendant regarding the consequences of refusal to submit to a chemical test. If the officer fails to properly advise the defendant in the terms required by statute, the defendant may not be subject to the mandatory license suspension or the enhancement for willful refusal to complete a test. (See *People v. Brannon* (1973) 32 Cal.App.3d 971, 978 [108 Cal.Rptr. 620]; *People v. Municipal Court (Gonzales)* (1982) 137 Cal.App.3d 114, 118 [186 Cal.Rptr. 716].) However, the refusal is still admissible in criminal proceedings for driving under the influence. (*People v. Municipal Court (Gonzales)*, *supra*, 137 Cal.App.3d at p. 118.) Thus, the court in *People v. Municipal Court (Gonzales)*, *supra*, 137 Cal.App.3d at p.

118, held that the defendant's refusal was admissible despite the officer's failure to advise the defendant that refusal would be used against him in a court of law, an advisement specifically required by the statute. (See Veh. Code, § 23612(a)(4).)

## 2131. Refusal—Enhancement (Veh. Code, §§ 23577, 23612)

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**If you find the defendant guilty of (causing injury while driving under the influence/ [or] [the lesser offense of] driving under the influence), you must then decide whether the People have proved the additional allegation that the defendant willfully refused to (submit to/ [or] complete) a chemical test to determine ((his/her) blood alcohol content/ [or] whether (he/she) had consumed a drug).**

**To prove this allegation, the People must prove that:**

- 1. A peace officer asked the defendant to submit to a chemical test to determine ((his/her) blood alcohol content/ [or] whether (he/she) had consumed a drug);**
- 2. The peace officer fully advised the defendant of the requirement to submit to a test and the consequences of not submitting to a test;**

**[AND]**

- 3. The defendant willfully refused to (submit to a test/ [or] to complete the test)(./;)**

**[AND]**

- 4. The peace officer lawfully arrested the defendant and had reasonable cause to believe that defendant was driving a motor vehicle in violation of Vehicle Code section 23140, 23152, or 23153.]**

**To have *fully advised the defendant*, the peace officer must have told (him/her) all of the following information:**

- 1. (He/She) may choose a blood(./ or) breath[, or urine] test; [if (he/she) completes a breath test, (he/she) may also be required to submit to a blood [or urine] test to determine if (he/she) had consumed a drug;] [if only one test is available, (he/she) must complete the test available;] [if (he/she) is not able to complete the test chosen, (he/she) must submit to (the other/another) test;]**

2. **(He/She) does not have the right to have an attorney present before saying whether (he/she) will submit to a test, before deciding which test to take, or during administration of a test;**
3. **If (he/she) refuses to submit to a test, the refusal may be used against (him/her) in court;**
4. **Failure to submit to or complete a test will result in a fine and mandatory imprisonment if (he/she) is convicted of driving under the influence or with a blood alcohol level of 0.08 percent or more;**

**AND**

5. **Failure to submit to or complete a test will result in suspension of (his/her) driving privilege for one year or revocation of (his/her) driving privilege for two or three years.**

*<Short Alternative; see Bench Notes>*

**[(His/Her) driving privilege will be revoked for two or three years if (he/she) has previously been convicted of one or more specific offenses related to driving under the influence or if (his/her) driving privilege has previously been suspended or revoked.]**

*<Long Alternative; see Bench Notes>*

**[A. (His/Her) driving privilege will be revoked for two years if (he/she) has been convicted within the previous (seven/ten) years of a separate violation of Vehicle Code section 23140, 23152, 23153, or 23103 as specified in section 23103.5, or of Penal Code section 191.5 or 192(c)(3). (His/Her) driving privilege will also be revoked for two years if (his/her) driving privilege has been suspended or revoked under Vehicle Code section 13353, 13353.1, or 13353.2 for an offense that occurred on a separate occasion within the previous (seven/ten) years;**

**AND**

**B. (His/Her) driving privilege will be revoked for three years if (he/she) has been convicted within the previous (seven/ten) years of two or more of the offenses just listed. (His/Her) driving privilege will also be revoked for three years if (his/her) driving privilege was previously suspended or revoked on two occasions, or if (he/she) has had any combination of two convictions,**

suspensions, or revocations, on separate occasions, within the previous (seven/ten) years.]

[Vehicle Code section 23140 prohibits a person under the age of 21 from driving with a blood alcohol content of 0.05 percent or more. Vehicle Code section 23152 prohibits driving under the influence of alcohol or drugs or driving with a blood alcohol level of 0.08 percent or more. Vehicle Code section 23153 prohibits causing injury while driving under the influence of alcohol or drugs or causing injury while driving with a blood alcohol level of 0.08 percent or more. Vehicle Code section 23103 as specified in section 23103.5 prohibits reckless driving involving alcohol. Penal Code section 191.5 prohibits gross vehicular manslaughter while intoxicated, and Penal Code section 192(c)(3) prohibits vehicular manslaughter while intoxicated.]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[A person employed as a police officer by \_\_\_\_\_ <insert name of agency that employs police officer> is a *peace officer*.]

[A person employed by \_\_\_\_\_ <insert name of agency that employs peace officer, e.g., “the Department of Fish and Wildlife”> is a *peace officer* if \_\_\_\_\_ <insert description of facts necessary to make employee a peace officer, e.g., “designated by the director of the agency as a peace officer”>.]

**[A defendant’s silence in response to an officer’s request to (submit to a chemical test/ [or] complete a chemical test) may be a refusal. If you conclude that the defendant was silent in response to an officer’s request to (submit to a chemical test/[or] complete a chemical test), you must decide whether that conduct was a refusal.]**

The People have the burden of proving beyond a reasonable doubt that the defendant willfully refused to (submit to/ [or] complete) a chemical test to determine ((his/her) blood alcohol content/ [or] whether (he/she) had consumed a drug). If the People have not met this burden, you must find this allegation has not been proved.

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New January 2006; Revised August 2009 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to instruct on the elements of the enhancement.

Do not give this instruction if the defendant is exempted from the implied consent law because the defendant has hemophilia or is taking anticoagulants. (See Veh. Code, § 23612(b), (c).)

The implied consent statute states that “[t]he testing shall be incidental to a lawful arrest and administered at the direction of a peace officer having reasonable cause to believe the person was driving a motor vehicle in violation of Section 23140, 23152, or 23153.” (Veh. Code, § 23612(a)(1)(C).) If there is a factual issue whether the defendant was lawfully arrested or whether the officer had reasonable cause to believe the defendant was under the influence, the court should consider whether giving bracketed element 4 is appropriate and whether the jury should be instructed on these additional issues. For an instruction on lawful arrest and reasonable cause, see CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

No reported case has established the degree of detail with which the jury must be instructed regarding the refusal admonition mandated by statute. The committee has provided several different options. The first sentence of element 5 under the definition of “fully advised” **must** be given. The court then may add either the short alternative or the long alternative or neither. If there is no issue regarding the two- and three-year revocations in the case and both parties agree, the court may choose to use the short alternative or to give just the first sentence of element 5. The court may choose to use the long alternative if there is an objection to the short version or the court determines that the longer version is more appropriate. The court may also choose to give the bracketed paragraph defining the Vehicle and Penal Code sections discussed in the long alternative at its discretion.

When giving the long version, give the option of “ten years” for the time period in which the prior conviction may be used, unless the court determines that the law prior to January 1, 2005 is applicable. In such case, the court must select the “seven-year” time period.

The jury must determine whether the witness is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of “peace officer” from the statute (e.g., “a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers”). (*Ibid.*) However, the court may not instruct the jury that the witness was a peace officer as a matter of law (e.g., “Officer Reed was a peace officer”). (*Ibid.*) If the witness is a police officer, give the bracketed

sentence that begins with “A person employed as a police officer.” If the witness is another type of peace officer, give the bracketed sentence that begins with “A person employed by.”

## AUTHORITY

- Enhancements ▶ Veh. Code, §§ 23577 & 23612.
- Statute Constitutional ▶ *Quintana v. Municipal Court* (1987) 192 Cal.App.3d 361, 366–369 [237 Cal.Rptr. 397].
- Statutory Admonitions Not Inherently Confusing or Misleading ▶ *Blitzstein v. Dept. of Motor Vehicles* (1988) 199 Cal.App.3d 138, 142 [244 Cal.Rptr. 624].
- Silence in Response to Request May Constitute Refusal ▶ *Garcia v. Department of Motor Vehicles* (2010) 185 Cal.App.4<sup>th</sup> 73, 82-84 [109 Cal.Rptr.3d 906].

### *Secondary Sources*

2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 226–235.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02[4][a], [b] (Matthew Bender).

## RELATED ISSUES

### ***Admonition Must Convey Strong Likelihood of Suspension***

It is insufficient for the officer to advise the defendant that his or her license “could” be suspended. (*Decker v. Dept. of Motor Vehicles* (1972) 6 Cal.3d 903, 905–906 [101 Cal.Rptr. 387, 495 P.2d 1307]; *Giomi v. Dept. of Motor Vehicles* (1971) 15 Cal.App.3d 905, 907 [93 Cal.Rptr. 613].) The officer must convey to the defendant that there is a strong likelihood that his or her license will be suspended. (*Decker, supra*, 6 Cal.3d at p. 906; *Giomi, supra*, 15 Cal.App.3d at p. 907.)

### ***Admonition Must Be Clearly Conveyed***

“[T]he burden is properly placed on the officer to give the warning required by section 13353 in a manner comprehensible to the driver.” (*Thompson v. Dept. of Motor Vehicles* (1980) 107 Cal.App.3d 354, 363 [165 Cal.Rptr. 626].) Thus, in *Thompson, supra*, 107 Cal.App.3d at p. 363, the court set aside the defendant’s license suspension because radio traffic prevented the defendant from hearing the admonition. However, where the defendant’s own “obstreperous conduct . . .

prevented the officer from completing the admonition,” or where the defendant’s own intoxication prevented him or her from understanding the admonition, the defendant may be held responsible for refusing to submit to a chemical test. (*Morphew v. Dept. of Motor Vehicles* (1982) 137 Cal.App.3d 738, 743–744 [188 Cal.Rptr. 126]; *Bush v. Bright* (1968) 264 Cal.App.2d 788, 792 [71 Cal.Rptr. 123].)

***Defendant Incapable of Understanding Due to Injury or Illness***

When the defendant, through no fault of his or her own, is incapable of understanding the admonition or of submitting to the test, the defendant cannot be penalized for refusing. (*Hughey v. Dept. of Motor Vehicles* (1991) 235 Cal.App.3d 752, 760 [1 Cal.Rptr.2d 115].) Thus, in *Hughey, supra*, 235 Cal.App.3d at p. 760, the court held that the defendant was rendered incapable of refusing due to a head trauma. However, in *McDonnell v. Dept. of Motor Vehicles* (1975) 45 Cal.App.3d 653, 662 [119 Cal.Rptr. 804], the court upheld the license suspension when defendant’s use of alcohol triggered a hypoglycemic attack. The court held that because voluntary alcohol use aggravated the defendant’s illness, the defendant could be held responsible for his subsequent refusal, even if the illness prevented the defendant from understanding the admonition. (*Ibid.*)

See the Related Issues section in CALCRIM No. 2130, *Refusal—Consciousness of Guilt*.

**2132–2139. Reserved for Future Use**

## 2500. Illegal Possession, etc., of Weapon

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The defendant is charged [in Count \_\_] with unlawfully (possessing/manufacturing/causing to be manufactured/importing/keeping for sale/offering or exposing for sale/giving/lending/buying/receiving) a weapon, specifically (a/an) \_\_\_\_\_ <insert type of weapon > [in violation of Penal Code section[s] \_\_\_\_\_ <insert appropriate code section[s]>].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (possessed/manufactured/caused to be manufactured/imported into California/kept for sale/offered or exposed for sale/gave/lent/bought/received) (a/an) \_\_\_\_\_ <insert type of weapon>;
2. The defendant knew that (he/she) (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) the \_\_\_\_\_ <insert type of weapon>;

[AND]

<Alternative 3A—object capable of innocent uses>

3. The defendant (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) the object as a weapon. ~~When deciding whether the defendant (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) the object as a weapon, consider all the surrounding circumstances relating to that question, including when and where the object was (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received)[,] [and] [where the defendant was going][,] [and] [whether the object was changed from its standard form][,] and any other evidence that indicates whether the object would be used for a dangerous, rather than a harmless, purpose.(;/.]~~

<Alternative 3B—object designed solely for use as weapon>

**[3. The defendant knew that the object (was (a/an) \_\_\_\_\_**  
<insert characteristics of weapon, e.g., “unusually short shotgun, penknife  
containing stabbing instrument”>/could be used \_\_\_\_\_ <insert  
description of weapon, e.g., “as a stabbing weapon,” or “for purposes of  
offense or defense”>).]

<Give element 4 only if defendant is charged with offering or exposing for  
sale.>

**[AND**

**4. \_\_\_\_\_ The defendant intended to sell it.]**

<Give only if alternative 3A is given.>

**[When deciding whether the defendant (possessed/manufactured/caused to be  
manufactured/imported/kept for sale/offered or exposed for  
sale/gave/lent/bought/received) the object as a weapon, consider all the  
surrounding circumstances relating to that question, including when and  
where the object was (possessed/manufactured/caused to be  
manufactured/imported/kept for sale/offered or exposed for  
sale/gave/lent/bought/received)[,] [and] [where the defendant was going][,]  
[and] [whether the object was changed from its standard form][,] and any  
other evidence that indicates whether the object would be used for a  
dangerous, rather than a harmless, purpose.]**

<Give only if alternative 3B is given.>

**[The People do not have to prove that the defendant intended to use the  
object as a weapon.]**

**(A/An) \_\_\_\_\_ <insert type of weapon> means \_\_\_\_\_ <insert  
appropriate definition)>.**

<Give only if the weapon used has specific characteristics of which the defendant  
must have been aware.>

**[A \_\_\_\_\_ <insert type of weapon specified in element 3B> is  
\_\_\_\_\_ <insert defining characteristics of weapon>.**

**[The People do not have to prove that the object was (concealable[,]/ [or]  
carried by the defendant on (his/her) person[,]/ [or] (displayed/visible)).]**

**[(A/An) \_\_\_\_\_ <insert prohibited firearm> does not need to be in  
working order if it was designed to shoot and appears capable of shooting.]**

**[Two or more people may possess something at the same time.]**

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) the following weapons: \_\_\_\_\_ <insert description of each weapon when multiple items alleged>. You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) at least one of these weapons and you all agree on which weapon (he/she) (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received).]

<Defense: Statutory Exemptions>

[The defendant did not unlawfully (possess/manufacture/cause to be manufactured/import/keep for sale/offer or expose for sale/give/lend/buy/receive) (a/an) \_\_\_\_\_ <insert type of weapon> if \_\_\_\_\_ <insert exception>. The People have the burden of proving beyond a reasonable doubt that the defendant unlawfully (possessed/manufactured/caused to be manufactured/imported/kept for sale/offered or exposed for sale/gave/lent/bought/received) (a/an) \_\_\_\_\_ <insert type of weapon>. If the People have not met this burden, you must find the defendant not guilty of this crime.]

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New January 2006; Revised August 2006, April 2008, February 2012, February 2015 [*insert date of council approval*]

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Penal Code section 12020 has been repealed. In its place, the legislature enacted numerous -new statutes that became effective January 1, 2012. Whenever a blank in the instruction calls for inserting a type of weapon, an exception, or a definition, refer to the appropriate new Penal Code section.

Element 3 contains the requirement that the defendant know that the object is a weapon. A more complete discussion of this issue is provided in the Commentary section below. Select alternative 3A if the object is capable of innocent uses. In such cases, the court has a **sua sponte** duty to instruct on when an object is possessed “as a weapon.” (*People v. Fannin, supra*, 91 Cal.App.4th at p. 1404; *People v. Grubb* (1965) 63 Cal.2d 614, 620–621, fn. 9 [47 Cal.Rptr. 772, 408 P.2d 100].)

Select alternative 3B if the object “has no conceivable innocent function” (*People v. Fannin* (2001) 91 Cal.App.4th 1399, 1405 [111 Cal.Rptr.2d 496]), or when the item is specifically designed to be one of the weapons defined in the Penal Code (see *People v. Gaitan* (2001) 92 Cal.App.4th 540, 547 [111 Cal.Rptr.2d 885]).

Give element 4 only if the defendant is charged with offering or exposing for sale. (See *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].)

For any of the weapons not defined in the Penal Code, use an appropriate definition from the case law, where available.

If the prosecution alleges under a single count that the defendant possessed multiple weapons and the possession was “fragmented as to time . . . [or] space,” the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].) Give the bracketed paragraph beginning “The People allege that the defendant possessed the following weapons,” inserting the items alleged. Also make the appropriate adjustments to the language of the instruction to refer to multiple weapons or objects.

### ***Defenses—Instructional Duty***

If there is sufficient evidence to raise a reasonable doubt about the existence of one of the statutory exemptions, the court has a **sua sponte** duty to give the bracketed instruction on that defense. (See *People v. Mower* (2002) 28 Cal.4th 457, 478–481 [122 Cal.Rptr.2d 326, 49 P.3d 1067] [discussing affirmative defenses generally and the burden of proof].) Insert the appropriate language in the bracketed paragraph beginning, “The defendant did not unlawfully . . . .” .

## **AUTHORITY**

Elements ▶ Pen. Code, §§ 19200, 20310, 20410, 20510, 20610, 20710, 20910, 21110, 21810, 22010, 22210, 24310, 24410, 24510, 24610, 24710, 30210, 31500, 32310, 32311, 32900, 33215, 33600.

- Need Not Prove Intent to Use ▶ *People v. Rubalcava* (2000) 23 Cal.4th 322, 328 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. Grubb* (1965) 63 Cal.2d 614, 620–621, fn. 9 [47 Cal.Rptr. 772, 408 P.2d 100].
- Knowledge Required ▶ *People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52]; *People v. Gaitan* (2001) 92 Cal.App.4th 540, 547 [111 Cal.Rptr.2d 885].
- Specific Intent Required for Offer to Sell ▶ *People v. Jackson* (1963) 59 Cal.2d 468, 469–470 [30 Cal.Rptr. 329, 381 P.2d 1].
- Specific Intent Includes Knowledge of Forbidden Characteristics of Weapon ▶ *People v. King* (2006) 38 Cal.4th 617, 627–628 [42 Cal.Rptr.3d 743, 133 P.3d 636].
- Innocent Object—Must Prove Possessed as Weapon ▶ *People v. Grubb* (1965) 63 Cal.2d 614, 620–621 [47 Cal.Rptr. 772, 408 P.2d 100]; *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1404 [111 Cal.Rptr.2d 496].
- Definition of Blackjack, etc. ▶ *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1402 [111 Cal.Rptr.2d 496]; *People v. Mulherin* (1934) 140 Cal.App. 212, 215 [35 P.2d 174].
- Firearm Need Not Be Operable ▶ *People v. Favalora* (1974) 42 Cal.App.3d 988, 991 [117 Cal.Rptr. 291].
- Measurement of Sawed-Off Shotgun ▶ *People v. Rooney* (1993) 17 Cal.App.4th 1207, 1211–1213 [21 Cal.Rptr.2d 900]; *People v. Stinson* (1970) 8 Cal.App.3d 497, 500 [87 Cal.Rptr. 537].
- Measurement of Fléchette Dart ▶ *People v. Olmsted* (2000) 84 Cal.App.4th 270, 275 [100 Cal.Rptr.2d 755].
- Constructive vs. Actual Possession ▶ *People v. Azevedo* (1984) 161 Cal.App.3d 235, 242–243 [207 Cal.Rptr. 270], questioned on other grounds in *In re Jorge M.* (2000) 23 Cal.4th 866, 876, fn. 6 [98 Cal.Rptr.2d 466, 4 P.3d 297].
- Knowledge of Specific Characteristics of Weapon ▶ *People v. King* (2006) 38 Cal.4th 617, 628 [42 Cal.Rptr.3d 743, 133 P.3d 636].

### ***Secondary Sources***

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 211-212.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.01 (Matthew Bender).

## COMMENTARY

### *Element 3—Knowledge*

“Intent to use a weapon is not an element of the crime of weapon possession.” (*People v. Fannin* (2001) 91 Cal.App.4th 1399, 1404 [111 Cal.Rptr.2d 496].) However, interpreting now-repealed Penal Code section 12020(a)(4), possession of a concealed dirk or dagger, the Supreme Court stated that “[a] defendant who does not know that he is carrying the weapon or that the concealed instrument may be used as a stabbing weapon is . . . not guilty of violating section 12020.” (*People v. Rubalcava* (2000) 23 Cal.4th 322, 331–332 [96 Cal.Rptr.2d 735, 1 P.3d 52].) Applying this holding to possession of other weapons prohibited under now-repealed Penal Code section 12020(a), the courts have concluded that the defendant must know that the object is a weapon or may be used as a weapon, or must possess the object “as a weapon.” (*People v. Gaitan* (2001) 92 Cal.App.4th 540, 547 [111 Cal.Rptr.2d 885]; *People v. Taylor* (2001) 93 Cal.App.4th 933, 941 [114 Cal.Rptr.2d 23]; *People v. Fannin, supra*, 91 Cal.App.4th at p. 1404.)

In *People v. Gaitan, supra*, 92 Cal.App.4th at p. 547, for example, the court considered the possession of “metal knuckles,” defined in now-repealed Penal Code section 12020(c)(7) as an object “worn for purposes of offense or defense.” The court held that the prosecution does not have to prove that the defendant *intended* to use the object for offense or defense but must prove that the defendant *knew* that “the instrument may be used for purposes of offense or defense.” (*Id.* at p. 547.)

Similarly, in *People v. Taylor, supra*, 93 Cal.App.4th at p. 941, involving possession of a cane sword, the court held that “[i]n order to protect against the significant possibility of punishing innocent possession by one who believes he or she simply has an ordinary cane, we infer the Legislature intended a scienter requirement of actual knowledge that the cane conceals a sword.”

Finally, *People v. Fannin, supra*, 91 Cal.App.4th at p. 1404, considered whether a bicycle chain with a lock at the end met the definition of a “slungshot.” The court held that “if the object is not a weapon per se, but an instrument with ordinary innocent uses, the prosecution must prove that the object was possessed *as a weapon*.” (*Ibid.* [emphasis in original]; see also *People v. Grubb* (1965) 63 Cal.2d 614, 620–621 [47 Cal.Rptr. 772, 408 P.2d 100] [possession of modified baseball bat].)

In element 3 of the instruction, the court should give alternative 3B if the object has no innocent uses, inserting the appropriate description of the weapon. If the object has innocent uses, the court should give alternative 3A. The court may choose not to give element 3 if the court concludes that a previous case holding that the prosecution does not need to prove knowledge is still valid authority. However, the committee would caution against this approach in light of *Rubalcava* and *In re Jorge M.* (See *People v. Schaefer* (2004) 118 Cal.App.4th 893, 904–905 [13 Cal.Rptr.3d 442] [observing that, since *In re Jorge M.*, it is unclear if the prosecution must prove that the defendant knew shotgun was “sawed off” but that failure to give instruction was harmless if error].)

It is not unlawful to possess a large-capacity magazine or large-capacity conversion kit. It is unlawful, however, to receive or buy these items after January 1, 2014, the effective date of Penal Code sections 32310 and 32311.

**2722. Battery by Gassing (Pen. Code, §§ 243.9, 4501.1)**

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The defendant is charged [in Count \_\_\_] with battery by gassing [in violation of \_\_\_\_\_ <insert appropriate code section[s]>].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant was (serving a sentence in a [California] state prison/confined in a local detention facility);
2. While so confined, the defendant intentionally committed an act of gassing, that is, (he/she) (placed[,]/ [or] threw[,]/ [or] caused to be placed or thrown) (human excrement/human urine/human bodily fluids or substances/a mixture containing human bodily substances) on the body of (a peace officer/an employee of a (state prison/local detention facility));

AND

3. The (excrement/urine/bodily fluids or substances/mixture) actually made contact with the skin [or membranes] of (a peace officer/an employee of a (state prison/local detention facility)).

[A person is *serving a sentence in a state prison* if he or she is (confined in \_\_\_\_\_ <insert name of institution from Pen. Code, § 5003>/committed to the Department of (the Youth Authority/Corrections)) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the (confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *serving a sentence in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is not *serving a sentence in a state prison*.]]

[A (county jail/city jail/\_\_\_\_\_ <insert description>) is a *local detention facility*.]

[A sworn member of \_\_\_\_\_ <insert name of agency that employs peace officer>, authorized by \_\_\_\_\_ <insert appropriate section from Pen. Code, § 830 et seq.> to \_\_\_\_\_ <describe statutory authority>, is a peace officer.]

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New January 2006

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the battery is charged under Penal Code section 4501.1, in element 1, use the phrase “serving a sentence in state prison” and the bracketed definition of this phrase. If the battery is charged under Penal Code section 243.9, in element 1, give the language referencing a “local detention facility” and the bracketed definition of local detention facility.

When giving the definition of “serving a sentence in a state prison,” give the bracketed portion that begins “regardless of the purpose,” or the bracketed second or third sentence, if requested and relevant based on the evidence.

The jury must determine whether the alleged victim was a peace officer. (*People v. Flood* (1998) 18 Cal.4th 470, 482 [76 Cal.Rptr.2d 180, 957 P.2d 869].) The court must instruct the jury in the appropriate definition of “peace officer” from the statute. (*Ibid.*) It is error for the court to instruct that the witness is a peace officer as a matter of law. (*Ibid.* [instruction that “Officer Bridgeman and Officer Gurney are peace officers” was error].)

## AUTHORITY

- Elements ▶ Pen. Code, §§ 242, 243.9, 4501.1.
- Confined in State Prison Defined ▶ Pen. Code, § 4504.
- Local Detention Facility Defined ▶ Pen. Code, § 6031.4.

## **LESSER INCLUDED OFFENSES**

- Battery by Prisoner on Non-Prisoner. *People v. Flores* (2009) 176 Cal.App.4th 924, 929 [97 Cal.Rptr.3d 924].

*Secondary Sources*

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 12–14, 62.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.12 (Matthew Bender).

**2723. Battery by Prisoner on Nonprisoner (Pen. Code, § 4501.5)**

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The defendant is charged [in Count \_\_] with battery on someone who was not a prisoner [in violation of Penal Code section 4501.5].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully touched \_\_\_\_\_ <insert name of person allegedly battered, excluding title of law enforcement agent> in a harmful or offensive manner;
2. When (he/she) acted, the defendant was serving a sentence in a [California] state prison;

[AND]

3. \_\_\_\_\_ <insert name of person allegedly battered, excluding title of law enforcement agent> was not serving a sentence in state prison(;/.)

<Give element 4 when self-defense or defense of another is an issue raised by the evidence.>

[AND]

4. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

The slightest touching can be enough to commit a battery if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

A person is *servicing a sentence in a state prison* if he or she is (confined in \_\_\_\_\_ <insert name of institution from Pen. Code, § 5003>/committed to the Department of (Corrections and Rehabilitation, Division of Juvenile Justice/Corrections and Rehabilitation)) by an order made according to law[, regardless of both the purpose of the (confinement/commitment) and the validity of the order directing the (confinement/commitment), until a judgment of a competent court setting aside the order becomes final]. [A person may be *servicing a sentence in a state prison* even if, at the time of the offense, he or she is confined in a local correctional institution pending trial or is temporarily outside the prison walls or boundaries for any permitted purpose, including but not limited to serving on a work detail.] [However, a prisoner who has been released on parole is not *servicing a sentence in a state prison*.]

<When lawful performance is an issue, give the following paragraph and Instruction 2671, *Lawful Performance: Custodial Officer*.>

[A custodial officer is not lawfully performing his or her duties if he or she is using unreasonable or excessive force in his or her duties. Instruction 2671 explains when force is unreasonable or excessive.]

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New January 2006 *[insert date of council approval]*

## BENCH NOTES

### *Instructional Duty*

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 4 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

The court has a **sua sponte** duty to instruct on defendant's reliance on self-defense as it relates to the use of excessive force. (See *People v. Coleman* (1978) 84 Cal.App.3d 1016, 1022–1023 [149 Cal.Rptr. 134]; *People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541]; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) If there is evidence of excessive force, give bracketed element 4, the last bracketed paragraph, and the appropriate portions of CALCRIM No. 2671, *Lawful Performance: Custodial Officer*.

Give the bracketed paragraph on indirect touching if that is an issue.

In the definition of “serving a sentence in a state prison,” give the bracketed portion that begins with “regardless of the purpose,” or the bracketed second or third sentence, if requested and relevant based on the evidence.

***Related Instructions***

CALCRIM No. 960, *Simple Battery*.

**AUTHORITY**

- Elements of Battery by Prisoner on Nonprisoner ▶ Pen. Code, § 4501.5.
- Elements of Battery ▶ Pen. Code, § 242; see *People v. Martinez* (1970) 3 Cal.App.3d 886, 889 [83 Cal.Rptr. 914] [harmful or offensive touching].
- Willful Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Confined in State Prison Defined ▶ Pen. Code, § 4504.
- Underlying Conviction Need Not Be Valid ▶ *Wells v. California* (9th Cir. 1965) 352 F.2d 439, 442.

***Secondary Sources***

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Crimes Against the Person, §§ 12–15, 57.

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Defenses, § 67.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.12 (Matthew Bender).

**LESSER INCLUDED OFFENSES**

- Simple Battery ▶ Pen. Code, § 242.
- Assault ▶ Pen. Code, § 240.
- ~~Battery by Gassing. *People v. Flores* (2009) 176 Cal.App.4th 924, 929 [97 Cal.Rptr.3d 924].~~

**2724–2734. Reserved for Future Use**

**3428. Mental Impairment: Defense to Specific Intent or Mental State  
(Pen. Code, § 28)**

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**You have heard evidence that the defendant may have suffered from a mental (disease[,]/ [or] defect[,]/ [or] disorder). You may consider this evidence only for the limited purpose of deciding whether, at the time of the charged crime, the defendant acted [or failed to act] with the intent or mental state required for that crime.**

**The People have the burden of proving beyond a reasonable doubt that the defendant acted [or failed to act] with the required intent or mental state, specifically:** \_\_\_\_\_ *<insert specific intent or mental state required, e.g., “malice aforethought,” “the intent to permanently deprive the owner of his or her property,” or “knowledge that . . .”>*. **If the People have not met this burden, you must find the defendant not guilty of** \_\_\_\_\_ *<insert name of alleged offense>*.

*<Repeat this paragraph for each offense requiring specific intent or a specific mental state.>*

**[Do not consider evidence of mental (disease[,]/ [or] defect[,]/ [or] disorder) when deciding if** \_\_\_\_\_ *<insert name of nontarget offense>* **was a natural and probable consequence of** \_\_\_\_\_ *<insert name of target offense>*.]

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*New January 2006 [\[insert date of council approval\]](#)*

**BENCH NOTES**

***Instructional Duty***

The court has no sua sponte duty to instruct on mental impairment as a defense to specific intent or mental state; however, the trial court must give this instruction on request. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119 [2 Cal.Rptr.2d 364, 820 P.2d 588].) The jury may consider evidence of mental impairment and its effect on the defendant’s ability to form any mental state required for the offense charged. (Pen. Code, § 28; *People v. Reyes* (1997) 52 Cal.App.4th 975, 983–985 [61 Cal.Rptr.2d 39] [relevant to knowledge element in receiving stolen property]; *People v. Mendoza* (1998) 18 Cal.4th 1114, 1131–1134 [77 Cal.Rptr.2d 428, 959 P.2d 735] [voluntary intoxication relevant to mental state in aiding and abetting].)

Evidence of mental impairment may not be considered for general-intent crimes, unless there is an element, such as knowledge, that requires a specific mental state.

(*People v. Reyes*, *supra*, 52 Cal.App.4th at pp. 983–985; *People v. Mendoza*, *supra*, 18 Cal.4th at pp. 1131–1134 [aiding and abetting].)

In all cases, the court must insert the specific intent or mental state required and the offense for which the mental state is an element. (See *People v. Hill* (1967) 67 Cal.2d 105, 118 [60 Cal.Rptr. 234, 429 P.2d 586].)

Give the bracketed paragraph that begins with “You must not consider evidence of mental” when instructing on aiding and abetting liability for a nontarget offense. (*People v. Mendoza*, *supra*, 18 Cal.4th at p. 1134.)

In an attempted murder case, it was error to insert “intent to kill” instead of “express malice” as the required intent in paragraph two of this instruction. (See *People v. Ocegueda* (2016) 247 Cal.App.4th 1393, 1407 [203 Cal.Rptr.3d 233].)

The court may need to modify this instruction to ensure it does not prohibit the jury from considering evidence of a defendant’s mental illness or impairment for a purpose other than deciding whether defendant possessed the required mental state for murder. (*People v. McGehee* (2016) 246 Cal.App.4th 1190, 1205 [201 Cal.Rptr.3d 714].) For example, giving this unmodified instruction with CALCRIM No. 362, *Consciousness of Guilt: False Statements*, could be error if a defendant’s false statements were the product of mental illness or impairment. (*Ibid*).

## AUTHORITY

- Statutory Authority ▶ Pen. Code, § 28; see also Pen. Code, §§ 25, 29.
- Instructional Requirements ▶ *People v. Saille* (1991) 54 Cal.3d 1103, 1119 [2 Cal.Rptr.2d 364, 820 P.2d 588].
- Mental States—Knowledge ▶ *People v. Reyes* (1997) 52 Cal.App.4th 975, 983–985 [61 Cal.Rptr.2d 39].
- Mental States—Aiding and Abetting ▶ *People v. Mendoza* (1998) 18 Cal.4th 1114, 1131–1134 [77 Cal.Rptr.2d 428, 959 P.2d 735].

### *Secondary Sources*

1 Witkin & Epstein, *California Criminal Law* (3d ed. 2000) Defenses, § 10.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 73, *Defenses and Justifications*, § 73.03 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 124, *Jurisdiction and Disposition Hearings*, § 124.04 (Matthew Bender).

## RELATED ISSUES

### *Scope of Expert Testimony*

Penal Code section 29 provides that an expert testifying about a defendant's mental illness "shall not testify as to whether the defendant had or did not have the required mental states." (Pen. Code, § 29.) In *People v. Coddington* (2000) 23 Cal.4th 529, 582–583 [97 Cal.Rptr.2d 528, 2 P.3d 1081], disapproved on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13 [108 Cal.Rptr.2d 409, 25 P.3d 618], the Supreme Court held that the trial court improperly restricted the scope of the expert testimony when the court refused to permit "hypothetical questions regarding the effect of mental defect or illness on a person's ability to deliberate or premeditate." (*Id.* at p. 582.) "An expert's opinion that a form of mental illness can lead to impulsive behavior is relevant to the existence *vel non* of the mental states of premeditation and deliberation regardless of whether the expert believed appellant actually harbored those mental states at the time of the killing." (*Id.* at pp. 582–583 [italics original]; see also *People v. Nunn* (1996) 50 Cal.App.4th 1357, 1364–1365 [58 Cal.Rptr.2d 294] [discussing appropriate scope of expert testimony].)

## 3472. Right to Self-Defense: May Not Be Contrived

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**A person does not have the right to self-defense if he or she provokes a fight or quarrel with the intent to create an excuse to use force.**

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*New January 2006; Revised February 2016 [insert date of council approval]*

### BENCH NOTES

#### *Instructional Duty*

The court may give this instruction on request when supported by the evidence. (*People v. Olguin* (1995) 31 Cal.App.4th 1355, 1381 [37 Cal.Rptr.2d 596].) The California Supreme Court has held that language in CALJIC No. 5.55, which is similar to this instruction, correctly states California law on self-defense and imperfect self-defense. (*People v. Enraca* (2012) 53 Cal.4th 735, 761-762 [269 P.3d 543]; *People v. Hinshaw* (1924) 194 Cal. 1, 26 [227 P. 156].) This instruction may require modification in the rare case in which a defendant intends to provoke only a non-deadly confrontation and the victim responds with deadly force. (*People v. Eulian*, (2016) 247 Cal.App.4th 1324, 1334 [203 Cal.Rptr.3d 101]; However, a Court of Appeal has held that this instruction does not accurately state California law where a defendant uses force intending only to provoke a fistfight and the victim responds with deadly force. see also (*People v. Ramirez* (2015) 233 Cal.App.4th 940, 952 [183 Cal.Rptr.3d 267].): The court should modify this instruction if necessary.

### AUTHORITY

- Instructional Requirements ▶ *People v. Olguin* (1995) 31 Cal.App.4th 1355, 1381 [37 Cal.Rptr.2d 596]; *Fraguglia v. Sala* (1936) 17 Cal.App.2d 738, 743–744 [62 P.2d 783]; *People v. Hinshaw* (1924) 194 Cal. 1, 26 [227 P. 156].
- This Instruction Generally a Correct Statement of Law ▶ *People v. Eulian*, (2016) 247 Cal.App.4th 1324, 1334 [203 Cal.Rptr.3d 101].)

#### *Secondary Sources*

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 75, 78.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.11[2][a] (Matthew Bender).

**3473. Reserved for Future Use**

**3477. Presumption That Resident Was Reasonably Afraid of Death or Great Bodily Injury (Pen. Code, § 198.5)**

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**The law presumes that the defendant reasonably feared imminent death or great bodily injury to (himself/herself)[, or to a member of (his/her) family or household,] if:**

- 1. An intruder unlawfully and forcibly (entered/ [or] was entering) the defendant's home;**
- 2. The defendant knew [or reasonably believed] that an intruder unlawfully and forcibly (entered/ [or] was entering) the defendant's home;**
- 3. The intruder was not a member of the defendant's household or family;**

**AND**

- 4. The defendant used force intended to or likely to cause death or great bodily injury to the intruder inside the home.**

**[Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]**

**The People have the burden of overcoming this presumption. This means that the People must prove that the defendant did not have a reasonable fear of imminent death or injury to (himself/herself)[, or to a member of his or her family or household,] when (he/she) used force against the intruder. If the People have not met this burden, you must find the defendant reasonably feared death or injury to (himself/herself)[, or to a member of his or her family or household].**

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*New January 2006 [insert date of council approval]*

**BENCH NOTES**

***Instructional Duty***

The court has a **sua sponte** duty to instruct on presumptions relevant to the issues of the case. (See *People v. Hood* (1969) 1 Cal.3d 444, 449 [82 Cal.Rptr. 618, 462 P.2d 370]; but see *People v. Silvey* (1997) 58 Cal.App.4th 1320, 1327 [68

Cal.Rptr.2d 681] [presumption not relevant because defendant was not a resident]; *People v. Owen* (1991) 226 Cal.App.3d 996, 1005 [277 Cal.Rptr. 341] [jury was otherwise adequately instructed on pertinent law].)

Give this instruction when there is evidence that a resident had a reasonable expectation of protection against unwanted intruders. *People v. Grays* (2016) 246 Cal.App.4th 679, 687-688 [202 Cal.Rptr.3d 288];

## AUTHORITY

- Instructional Requirements ▶ Pen. Code, § 198.5; *People v. Brown* (1992) 6 Cal.App.4th 1489, 1494–1495 [8 Cal.Rptr.2d 513].
- Rebuttable Presumptions Affecting Burden of Proof ▶ Evid. Code, §§ 601, 604, 606.
- Definition of Residence ▶ *People v. Grays* (2016) 246 Cal.App.4th 679, 687-688 [202 Cal.Rptr.3d 288];

### *Secondary Sources*

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, § 73.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, §§ 73.11[1], 73.13 (Matthew Bender).

**3478–3499. Reserved for Future Use**

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** Friday, February 24, 2017

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

Civil Practice and Procedure: Request for Entry of Default (adopt form CIV-105 and 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, 415-865-7694, [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 15, 2016

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

- Revise item for declaration of non-military status to correctly reflect the law on that point.
- Revise the form/create new form to include the requirements for default judgments under the Fair Debt Buying Practices Act.

*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 proposal originally circulated in Spring 2016 as revisions to form CIV-100 to (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.

Comments on (1) urged the committee to do more to specify the statutory requirements for a default judgment under the Fair Debt Buying Practices Act. The committee recommends circulation of a separate form, CIV-105, to request entry of default and/or default judgment under the Act.

Comments on (2) were uniformly positive. The committee deferred those revisions so as not to propose revisions to form CIV-100 twice in two years. The proposed revisions to the declaration of nonmilitary status are included in the current proposal.

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR17-

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Title	Action Requested
Civil Practice and Procedure: Request for Entry of Default	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form CIV-105; revise form CIV-100	January 1, 2018
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 adopting a new form to request entry of a default judgment in cases under the Fair Debt Buying Practices Act to facilitate compliance with the statutory requirements for a default judgment in such cases. The committee also proposes revising the current form used to request entry of a default judgment in all other civil cases to include a notice that the form is not for use in actions under the Fair Debt Buying Practices Act.<sup>1</sup> In addition, both forms include a revised 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 Office of the Attorney General.

### **Prior Circulation**

This proposal circulated previously in spring 2016. At that time, the committee proposed revising form CIV-100 by adding text to alert the court and parties that compliance with the Fair Debt Buying Practices Act, Civil Code sections 1788.50–1788.64, may be required for a default judgment. Many comments received by the committee requested that more be done to specify the numerous statutory requirements for a default judgment under the Act. The committee concluded that the best way to assist the courts and litigants in complying with the Act was to create a separate form for use only in such cases.

The proposed revisions to the declaration of nonmilitary service also circulated in spring 2016. The comments were all positive. However, the committee decided to defer action on these

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<sup>1</sup> Current form CIV-100 is available at [www.courts.ca.gov/documents/civ100.pdf](http://www.courts.ca.gov/documents/civ100.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.*

revisions and recirculate them with this proposal rather than revise form CIV-100 twice in two years.

## **The Proposal**

### **Requirements of the Fair Debt Buying Practices Act**

The Fair Debt Buying Practices Act, which took effect January 1, 2014, 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)).

The current general civil form for requesting a default judgment, form CIV-100, does not refer to the Act or include any of its requirements. The original proposal by the Office of the Attorney General was a response to the large number of default judgments that were entered across the state without satisfying these statutory requirements. Proposed new form CIV-105, based on form CIV-100, lists all of these requirements for a default judgment to assist both courts and litigants in complying with the Act.

The Act does not specify whether a default judgment should be entered by the clerk or the court, and the proposed form does not attempt to resolve this question. The form retains the boxes in the caption area in which the filing party requests entry of default and/or court judgment or clerk's judgment. In the body of the form, there is a single check box to request a default judgment under the Act.

To highlight the distinction between the new form and general civil default form CIV-100, proposed form CIV-105 includes, just below the caption, a statement that this form is "Only for use in actions under the Fair Debt Buying Practices Act, Civil Code Section 1788.50 et seq."

The proposed form also includes new items 3, 4, and 5, which specify the statutory requirements for a default judgment. Item 3 requires the party seeking a default judgment to state that the action is not barred by the statute of limitations (§ 1788.56). Comments would be appreciated on whether this statement should be required to be made under penalty of perjury. Item 4 lists the required allegations of the complaint (§ 1788.58), all of which must in fact have been alleged for a debt buyer plaintiff to obtain a default judgment (§ 1788.60). Item 5 lists the requirements for a default judgment (§ 1788.60). The statutory requirements in items 3, 4, and 5 do not have check boxes because all of these items must be present for the plaintiff to establish that the requirements of the Act have been met.

Items 6, 7, and 8 on pages 2 and 3 of proposed form CIV-105 are identical to items 4, 5, and 6 on form CIV-100, and all are declarations under penalty of perjury. Item 9 is the revised declaration of nonmilitary status (see below). Item 10, the memorandum of costs, is identical to item 7 on form CIV-100. The signature lines for items 9 and 10 have been consolidated.

### **Revisions to existing form CIV-100**

Two changes are proposed for this form. One is the addition just below the caption of a statement that this form is “Not for use in actions under the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq.” The other is the revisions to the declaration of nonmilitary status, item 8 (see below).

### **Declaration of nonmilitary status**

The proposed revisions to the declaration of nonmilitary status (item 8 on form CIV-100), briefly, are to (1) add reference to the state law definition of military service, (2) update the statutory reference to federal law, (3) simplify the language to correct an ambiguity, and (4) delete an unnecessary check box. The changes are fully described in the spring 2016 invitation to comment, available at [www.courts.ca.gov/documents/SPR16-07.pdf](http://www.courts.ca.gov/documents/SPR16-07.pdf).

### **Alternatives Considered**

#### **Revisions to form CIV-100 in light of Fair Debt Buying Practices Act**

The committee considered expanding the general civil default form (CIV-100) to include the Act’s statutory requirements. However, doing so would have added a substantial amount of content to an already dense form, pushing the form onto a third page for content that would only have relevance for a single type of case.

The committee also considered creating an attachment for use with the current default request form. Under this alternative, form CIV-100 would include a question about whether the Act applies. If the question were answered in the affirmative, the filer would be instructed to submit the attachment with the information and documents required by the Act. The committee does not recommend this alternative because an attachment can be overlooked and might not as effectively achieve compliance with the Act.

#### **Declaration of nonmilitary service**

The committee considered but rejected the alternative of making no revisions to this item because the changes are necessary to comply with state law and to accurately refer to federal law.

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

This proposal will require training of clerks regarding the new form and the documents that must be attached at the time of filing. The new form should, however, clarify requirements already imposed by law and make it easier for judges and clerks to determine compliance with the Act when reviewing requests for default judgment.

## 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 statement regarding the statute of limitations in item 3 be required to be made under penalty of perjury?

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 three and a half 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 forms CIV-100 and CIV-105, at pages 5–9

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;">02.06.17</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/Respondent:	
<b>REQUEST FOR</b> <input type="checkbox"/> <b>Entry of Default</b> <input type="checkbox"/> <b>Clerk's Judgment</b> <b>(Application)</b> <input type="checkbox"/> <b>Court Judgment</b>	CASE NUMBER: _____
<b>Not for use in actions under the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq.</b>	

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 under Code Civ. Proc., § 585.5 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):
<i>(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11.)</i>					

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

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
--	--------------

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** (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).

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)
----------------------	--------------------------

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)
----------------------	--------------------------

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. Appen. § 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)
----------------------	--------------------------

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</b> <b>the Judicial Council</b> <b>02.06.2017</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
<b>REQUEST FOR</b> <input type="checkbox"/> <b>Entry of Default</b> <input type="checkbox"/> <b>Clerk's Judgment</b> <b>(Application)</b> <input type="checkbox"/> <b>Court Judgment</b>	CASE NUMBER:
<b>Only for use in actions under the Fair Debt Buying Practices Act, Civil Code section 1788.50 et seq.</b>	

1. TO THE CLERK: On the complaint or cross-complaint filed
  - a. on (date):
  - b. by (name):
  - c.  Enter default of defendant(s) (name(s)):
  - d.  I request a judgment under Civil Code section 1788.60 and Code of Civil Procedure section 585 against defendant(s) (name(s)):

*(Testimony may be required. Check with the clerk regarding whether a hearing date is needed or whether the court will enter a judgment on an affidavit.)*

- e.  Default was previously entered on (date):

	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint* . . . . .	\$	\$	\$
b. Interest . . . . .	\$	\$	\$
c. Costs (see reverse) . . . . .	\$	\$	\$
d. Attorney fees . . . . .	\$	\$	\$
e. <b>TOTALS</b> . . . . .	\$	\$	\$

(\* Shall be established by business records, authenticated through a sworn declaration, submitted herewith. (Civ. Code, §§ 1788.58(a)(4), 1788.60(a).))

3. This action is not barred by the applicable statute of limitations (Civ. Code, § 1788.56).
4. **Requirements for the complaint.** The court shall not enter a default judgment unless the complaint contains ALL of the following allegations (Civ. Code, §§ 1788.58, 1788.60):
  - a. A statement that the plaintiff is a debt buyer;
  - b. A short, plain statement explaining the consumer transaction(s) that gave rise to the underlying debt;
  - c. A statement that the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
  - d. A statement of the debt balance at charge-off and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any;
  - e. The date of the default OR the date of the last payment;
  - f. The name and address of the charge-off creditor at the time of charge-off and the charge-off creditor's account number associated with the debt;

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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4. g. The name and last known address of the debtor as they appeared in the charge-off creditor's records at the time the debt was sold;
  - h. The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer; and
  - i. A statement that the plaintiff has complied with Civil Code section 1788.52.
5. **Requirements for default judgment under the Fair Debt Buying Practices Act.** The court shall not enter a default judgment unless ALL of the following documents are submitted with this request for default judgment (*Civ. Code, § 788.60(a)-(c)*):
- a. A copy of the contract or other document described in Civil Code section 1788.52(b), authenticated by a sworn declaration; AND
  - b. Business records, authenticated by a sworn declaration, to establish:
    - (1) that the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
    - (2) the debt balance, including the balance at charge-off; and the amount and nature of, and reason for, any post-charge-off interest and fees;
    - (3) the date of the default OR the date of the last payment;
    - (4) the name and address of the charge-off creditor at the time of charge off, and the account number associated with the debt;
    - (5) the name and last known address of the debtor at the time of the sale of the debt; and
    - (6) the names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer.

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 <i>(date)</i> : (2) <input type="checkbox"/> Default NOT entered as requested <i>(state reason)</i> : Clerk, by _____, Deputy
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6. **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 <i>(date)</i> : |
7.  **Declaration under Code Civ. Proc., § 585.5** (*required 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).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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8. **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 6, 7, and 8 are true and correct.

Date:

(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)
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9. **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. Appen. § 3911(2), or Military and Veterans Code section 400(b).

10. **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 Items 9 and 10 are 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:** 2/24/17

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

Civil Practice and Procedure: Denial of Request to Remove Name From Shared Gang Database

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee; Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):*

Christy Simons, Attorney

415-865-7694

christy.simons@jud.ca.gov

Adrienne Toomey, Supervising Attorney

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 15, 2016

Project description from annual agenda: Item 6: AB 2298. Participate in a newly-forming ad hoc working group comprised of members of several advisory committees to address issues presented by AB 2298. The legislation, which has been signed and goes into effect January 1, 2017, establishes a procedure for a person designated in a shared gang database who has contested that designation with the local law enforcement agency and whose challenge has been denied to bring an action in the superior court. New procedural rules and a form must be developed on an expedited basis to enable members of the public to utilize the procedure and the courts to implement the legislation. The working group will also consider clean-up legislation to address ambiguities in the statute.

*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

**SPR017-\_\_**

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**Title**

Civil Practice and Procedure: Denial of Request to Remove Name From Shared Gang Database

**Action Requested**

Review and submit comments by April 28, 2017

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

Cal. Rules of Court, rule 3.2300; form MC-1000

**Proposed Effective Date**

September 1, 2017

**Proposed by**

Civil and Small Claims Advisory Committee  
Hon. Raymond M. Cadei, Chair

**Contact**

Christy Simons, Attorney  
415-865-7694

Criminal Law Advisory Committee  
Hon. Tricia A. Bigelow, Chair

[christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov)

Adrienne Toomey, Supervising Attorney  
415-865-7977

[adrienne.toomey@jud.ca.gov](mailto:adrienne.toomey@jud.ca.gov)

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### Executive Summary and Origin

The Judicial Council adopted California Rules of Court, rule 3.2300 and approved new form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, effective January 20, 2017, in response to Assembly Bill 2298 (Stats. 2016, ch. 752), which took effect January 1, 2017. The legislation authorized superior court review of a law enforcement agency's denial of a request to remove an individual's name from a shared gang database.<sup>1</sup> The Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee are now seeking public comment on the rule and form.

### Background

The State of California currently maintains a "CalGang" system of databases that contain information about approximately 150,000 individuals designated by law enforcement as suspected gang members, associates, or affiliates.<sup>2</sup> According to the August 22, 2016, Senate Floor Analysis of AB 2298, the CalGang system contains data "including name, address,

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<sup>1</sup> The enacted version of this bill is available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB2298](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2298).

<sup>2</sup> Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 2298 (2015–2016 Reg. Sess.), available at [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160AB2298](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB2298).

*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.*

description, social security number, and race or ethnicity” of individuals in the database.<sup>3</sup> The database is widely accessed by law enforcement officers for various reasons including “to determine who should be served with civil gang injunctions, given gang sentences and targeted for saturation policing.”<sup>4</sup>

In response to concerns about the accuracy and secrecy of the CalGang database system, the Legislature enacted Penal Code section 186.34, effective January 1, 2014, requiring that before a law enforcement agency designates a person who is under 18 years of age as a suspected gang member, associate, or affiliate or otherwise identifies the person in a shared gang database, the agency must provide written notice and the basis for the proposed designation to the person and his or her parent or guardian, unless providing this notice would compromise an active criminal investigation or compromise the health or safety of the minor. (Pen. Code, § 186.34(b).) If the law enforcement agency sends such a notice, the minor or his or her parent or guardian may contest the designation with the law enforcement agency.<sup>5</sup>

Assembly Bill 2298 amends Penal Code section 186.34 and enacts new section 186.35, extending the provisions regarding notification and review of law enforcement agency decisions to designate an individual as a suspected gang member, associate, or affiliate in a shared gang database. Specifically, the bill extends to adults the right to notification and to contest designation with the local law enforcement agency, and it creates a procedure for persons who have contested their designation to seek superior court review if the law enforcement agency denies their request.

Penal Code section 186.35 states that a person may seek this judicial review by “filing an appeal” in the superior court.<sup>6</sup> It also states that the procedure for judicial review of a law enforcement agency’s denial is a “limited civil case.”<sup>7</sup> The statute limits the evidentiary record for the appeal to (1) the material submitted to and by the law enforcement agency when the person contested the inclusion in the database with the agency under Penal Code section 186.34, and (2) “any arguments presented to the [superior] court.”<sup>8</sup> In addition, Penal Code section 186.35(b) provides that if, on de novo review of this limited record and arguments, the court finds that the law enforcement agency has failed to establish the petitioner’s active gang membership, associate status, or affiliate status by clear and convincing evidence, the court shall order the law enforcement agency to remove the name of the person from the shared gang database.<sup>9</sup>

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<sup>3</sup> *Id.* at p. 5

<sup>4</sup> *Id.* at p. 6.

<sup>5</sup> Pen. Code, § 186.35(a).

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Id.* at § 186.35(b).

<sup>9</sup> *Ibid.*

Drafting an implementing rule and form to appropriately effectuate the intent of this bill proved challenging in part because the judicial review procedure described in Penal Code section 186.35 does not fit squarely into existing appellate, civil, or criminal procedure. Although the statute refers to the procedure as an “appeal” triggered by filing a “notice of appeal” in the superior court (Pen. Code, § 186.35(a)), there is no lower court decision or any adjudicatory decision by an administrative agency for the superior court to review. And although the statute states that the procedure under section 186.35 is a “limited civil case,” both the nature of the dispute and the procedures established under the statute are inconsistent with statutes regarding limited civil cases.<sup>10</sup> Those statutes delineate what constitutes a limited civil case based on the dollar amount in controversy. They also limit the permissible pleadings in limited civil cases to complaints, answers, and demurrers, provide for discovery, and provide for a jury or court trial, none of which appears to be contemplated by Penal Code section 186.35. Finally, although the legislation amends the Penal Code and relates to law enforcement decisions and actions that in certain instances may implicate criminal matters, a request to review a law enforcement decision to deny removal from the database is *not* tied to any specific underlying criminal case. Individuals not currently involved in any criminal court matter may seek judicial relief, and the Legislature made clear its intent to place this judicial review process outside the criminal context.

Given these statutory provisions, the chairs of the Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Appellate Advisory Committee, and Family and Juvenile Law Advisory Committee initially designated members of each of their committees to participate in an informal working group to review the legislation and consider possible implementing rules or forms. That working group proposed immediate adoption of a new rule and form to ensure that courts and individuals seeking review under this procedure would have necessary guidance as soon as possible after the legislation took effect on January 1, 2017. On the recommendation of the Civil and Small Claims Advisory Committee, the Judicial Council adopted the proposed rule and form effective January 20, 2017. The Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee are now seeking public comments on this rule and form and will propose any necessary revisions based on comments received.

## **The Proposal**

Rule 3.2300 and form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, are designed to implement the new judicial review procedure established by Penal Code 186.35. New rule 3.2300 combines elements from Penal Code section 186.35 with provisions modeled on the rule relating to habeas corpus petitions (rule 4.551) and formatting requirements from the rules relating to appeals to the superior court appellate division (rules 8.838 and 8.883). Among other things:

- New rule 3.2300 has been placed in a new “Miscellaneous” division within Title 3, Civil Rules; and form MC-1000 has been designated a miscellaneous form in recognition of Penal Code section 186.35’s review procedure, which is neither criminal nor general civil;

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<sup>10</sup> Code Civ. Proc., §§ 86 et seq. and 630.20 et seq.

- Rule 3.2300 requires the presiding judge to designate one or more judges to handle requests for review under Penal Code section 186.35, in further recognition of the unique nature of this review procedure. This provision is designed to ensure that any requests for review are handled by a judge who is familiar with proceedings under this section and are not treated as either criminal or general civil cases;
- Rule 3.2300 also:
  - Generally requires self-represented individuals to use new form MC-1000 when seeking review of a law enforcement agency decision. This requirement is designed to assist self-represented individuals and courts by ensuring that necessary information is conveyed to the court;
  - Requires the law enforcement agency to prepare, serve, and file the record specified by Penal Code section 186.35, and provides that if the law enforcement agency does not timely file the required record, the court may order the law enforcement agency to remove the name of the person from the shared gang database;
  - Allows the person filing the request for review to include written argument in his or her initial filing or in a separate filing, and also allows the law enforcement agency to file written argument; and
  - Provides for request or waiver of oral argument.

New form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, is designed to be a straightforward request for review of the law enforcement agency decision. It is in plain-language format, with instructions on the second page. The person filing the request is asked to attach a copy of the law enforcement agency decision.

### **Alternatives Considered**

The working group and the Civil and Small Claims Advisory Committee considered not developing any proposal at this time, as the legislation does not specifically require the Judicial Council to adopt implementing rules or forms. The working group and committee concluded, however, that without a rule providing direction for implementing this judicial procedure, individuals seeking review and the courts themselves might have difficulty implementing these new legislative requirements.

The working group and committee also considered not including any references to the content of the record in the rule. Ultimately, however, they determined that incorporating the relevant statutory requirements in the rule and including advisory committee comments with additional statutory references would be helpful.

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

The new rule and form are intended to create an efficient, clear process for courts, thereby minimizing any additional burdens as individuals seek judicial relief under the Penal Code section 186.35 process. 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 committees are interested in comments on the following:

- Are the placement of the new rule and form in the “miscellaneous” category of the civil rules of court and the rule’s provision directing that one or more judges in each court be designated to handle these requests for review the best ways to ensure that courts are able to manage these proceedings efficiently and effectively?
- 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 12 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**

1. Cal. Rules of Court, rule 3.2300, at pages 6–11
2. Form MC-1000, *Request for Review of Denial of Request to Remove Name From Gang Database*, at pages 12–13

1 Division 23. Miscellaneous

2  
3  
4 Rule 3.2300. Review under Penal Code section 186.35 of law enforcement agency  
5 denial of request to remove name from shared gang database

6  
7 **(a) Proceedings governed**

8  
9 This rule applies to proceedings under Penal Code section 186.35 to seek review of  
10 a local law enforcement agency's denial of a request under Penal Code section  
11 186.34 to remove a person's name from a shared gang database.

12  
13 **(b) Definitions**

14  
15 For purposes of this rule:

16  
17 (1) "Request for review" or "petition" means a "notice of appeal" under Penal  
18 Code section 186.35 requesting review of a law enforcement agency's  
19 decision denying a person's request under Penal Code section 186.34 to  
20 remove a person's name from a shared gang database.

21  
22 (2) "Law enforcement agency" means the local law enforcement agency that  
23 denied the request under Penal Code section 186.34 to remove a person's  
24 name from a shared gang database.

25  
26 **(c) Designated judge**

27  
28 The presiding judge of each superior court must designate one or more judges to  
29 handle any petitions governed by this rule that are filed in the court.

30  
31 **(d) Petition**

32  
33 (1) *Form*

34  
35 (A) Except as provided in (i) and (ii), *Request for Review of Denial of*  
36 *Request to Remove Name From Gang Database* (form MC-1000) must  
37 be used to seek review under Penal Code section 186.35 of a law  
38 enforcement agency's decision denying a request to remove a person's  
39 name from a shared gang database.

40  
41 (i) A petition filed by an attorney need not be on form MC-1000.  
42 For good cause the court may also accept a petition from a  
43 nonattorney that is not on form MC-1000.

1  
2 (ii) Any petition that is not on form MC-1000 must contain the  
3 information specified in form MC-1000.  
4

5 (B) The person seeking review must attach to the petition under (A) the law  
6 enforcement agency's written verification of its decision denying the  
7 person's request under Penal Code section 186.34 to remove his or her  
8 name—or, if the request was filed by a parent or guardian on behalf of  
9 a child under 18, the name of the child—from the shared gang  
10 database.  
11

12 (2) Time for filing  
13

14 The petition must be filed within 90 calendar days of the date the law  
15 enforcement agency mails or personally serves the person filing the petition  
16 with written verification of the agency's decision denying that person's  
17 request under Penal Code section 186.34 to remove the name from the shared  
18 gang database.  
19

20 (3) Where to file  
21

22 The petition must be filed in either the superior court of the county in which  
23 the law enforcement agency is located or, if the person filing the petition  
24 resides in California, in the superior court of the county in which that person  
25 resides.  
26

27 (4) Fee  
28

29 The fee for filing the petition is \$25, as specified in Government Code  
30 section 70615.  
31

32 (5) Service  
33

34 A copy of the petition with the attachment required under (1)(B) must be  
35 served either personally or by mail on the law enforcement agency, as  
36 provided in Code of Civil Procedure sections 1011–1013a. Proof of this  
37 service must be filed in the superior court with the petition.  
38

39 (e) **Record**  
40

41 (1) Filing  
42

- 1 (A) The law enforcement agency must serve the record on the person filing  
2 the petition and must file the record in the superior court in which the  
3 petition was filed.  
4  
5 (B) The record must be served and filed within 15 days after the date the  
6 petition is served on the law enforcement agency as required by  
7 subdivision (d)(5) of this rule.  
8  
9 (C) If the record contains any documents that are part of a juvenile case file  
10 or are sealed or confidential under Welfare and Institutions Code  
11 section 827, the law enforcement agency must include a coversheet that  
12 states “Confidential Filing – Juvenile Case File Enclosed.”  
13  
14 (D) The procedures set out in rules 2.550 and 2.551 apply to any record  
15 sought to be filed under seal in a proceeding under this rule.  
16

17 (2) Contents

18  
19 The record is limited to the documents required by Penal Code section  
20 186.35(b)  
21

22 (3) Format

- 23  
24 (A) The cover or first page of the record must:  
25  
26 (i) Clearly identify it as the record in the case;  
27  
28 (ii) Clearly indicate if the record includes any documents that are  
29 sealed or confidential under Welfare and Institutions Code  
30 section 827;  
31  
32 (iii) State the title and court number of the case; and  
33  
34 (iv) Include the name, mailing address, telephone number, fax  
35 number (if available), e-mail address (if available), and California  
36 State Bar number (if applicable) of the attorney or other person  
37 filing the record on behalf of the law enforcement agency. The  
38 court will use this as the name, mailing address, telephone  
39 number, fax number, and e-mail address of record for the agency  
40 unless the agency informs the court otherwise in writing.  
41  
42 (B) All documents in the record must have a page size of 8.5 by 11 inches;  
43

1 (C) The text must be reproduced as legibly as printed matter;

2  
3 (D) The contents must be arranged chronologically;

4  
5 (E) The pages must be consecutively numbered; and

6  
7 (F) The record must be bound on the left margin.

8  
9 (4) *Failure to file the record*

10  
11 If the law enforcement agency does not timely file the required record, the  
12 superior court clerk must serve the law enforcement agency with a notice  
13 indicating that the agency must file the record within five court days of  
14 service of the clerks notice or the court may order the law enforcement  
15 agency to remove the name of the person from the shared gang database.

16  
17 (f) **Written argument**

18  
19 (1) *Contents*

20  
21 (A) The person filing the petition may include in the petition or separately  
22 serve and file a written argument about why, based on the record  
23 specified in Penal Code section 186.35(b), the law enforcement agency  
24 has failed to establish by clear and convincing evidence the active gang  
25 membership, associate status, or affiliate status of the person so  
26 designated or to be so designated by the law enforcement agency in the  
27 shared gang database.

28  
29 (B) The law enforcement agency may serve and file a written argument  
30 about why, based on the record specified in Penal Code section  
31 186.35(b), it has established by clear and convincing evidence the  
32 active gang membership, associate status, or affiliate status of the  
33 person.

34  
35 (C) If an argument refers to something in the record, it must provide the  
36 page number of the record where that thing appears or, if the record has  
37 not yet been filed, the page number of the relevant document.

38  
39 (D) Except for any required attachment to a petition when an argument is  
40 included in the petition, nothing may be attached to an argument and an  
41 argument must not refer to any evidence that is not in the record.  
42

1           (2) Time to serve and file

2  
3           Any written argument must be served and filed within 15 days after the date  
4           the record is served.

5  
6           (3) Format and length of argument

7  
8           (A) The cover or first page of any argument must:

9  
10           (i) Clearly identify it as the argument of the person filing the petition  
11           or of the law enforcement agency;

12           (ii) State the title and court number of the case; and

13           (iii) Include the name, mailing address, telephone number, fax  
14           number (if available), e-mail address (if available), and California  
15           State Bar number (if applicable) of the attorney or other person  
16           filing the argument.

17  
18  
19  
20           (B) An argument must not exceed 10 pages.

21  
22           (C) The pages must be consecutively numbered.

23  
24       **(g) Oral argument**

25  
26           (1) Setting oral argument

27  
28           The court may set the case for oral argument at the request of either party or  
29           on its own motion.

30  
31           (2) Requesting or waiving oral argument

32  
33           The person filing the petition or the law enforcement agency may request oral  
34           argument or inform the court that they do not want to participate in oral  
35           argument. Any such request for or waiver of oral argument must be served  
36           and filed within 15 days after the date the record is served.

37  
38           (3) Sending notice of oral argument

39  
40           If oral argument is set, the clerk must send notice at least 20 days before the  
41           oral argument date. The court may shorten the notice period for good cause;  
42           in that event, the clerk must immediately notify the parties by telephone or  
43           other expeditious method.

1  
2 (4) Sealed or confidential records  
3

4 If the responding party indicates that the record contains information from a  
5 juvenile case file or documents that are sealed or confidential under Welfare  
6 and Institutions Code section 827, the argument must be closed to the public  
7 unless the crime charged allows for public access under Welfare and  
8 Institutions Code section 676.  
9

10 **(h) Decision**  
11

12 As provided in Penal Code section 186.35, if, on de novo review and any  
13 arguments presented to the court, the court finds that the law enforcement agency  
14 has failed to establish by clear and convincing evidence the active gang  
15 membership, associate status, or affiliate status of the person so designated in the  
16 shared gang database, the court must order the law enforcement agency to remove  
17 the name of the person from the shared gang database.  
18

19 **(i) Service on the Attorney General**  
20

21 The court must serve on the Attorney General a copy of any order under (e)(4) or  
22 (h) to remove a name from a shared gang database.  
23

24 **Advisory Committee Comment**  
25

26 **Subdivision (d)(1)(B).** Penal Code section 186.34(f) provides that if a person to be designated as  
27 a suspected gang member, associate, or affiliate, or his or her parent or guardian, submits written  
28 documentation to the local law enforcement agency contesting the designation, the local law  
29 enforcement agency “shall provide the person and his or her parent or guardian with written  
30 verification of the agency’s decision within 30 days of submission of the written documentation  
31 contesting the designation. If the law enforcement agency denies the request for removal, the  
32 notice of its determination shall state the reason for the denial.”  
33

34 **Subdivision (e)(2).** Penal Code section 186.35(b) provides that the evidentiary record for this  
35 review proceeding “shall be limited to the agency’s statement of basis of its designation made  
36 pursuant to subdivision (e) of Section 186.34, and the documentation provided to the agency by  
37 the appellant pursuant to subdivision (f) of Section 186.34.”  
38

39 Penal Code section 186.34(e)(1) provides that “[a] person, or, if the person is under 18 years of  
40 age, his or her parent or guardian, or an attorney working on behalf of the person may request  
41 information of any law enforcement agency as to whether the person is designated as a suspected  
42 gang member, associate, or affiliate in a shared gang database” and, if the person is so designated,  
43 “information as to the basis for the designation for the purpose of contesting the designation as

1 described in subdivision (f).” Section 186.35(e)(2) provides that “[t]he law enforcement agency  
2 shall provide information requested under paragraph (1), unless doing so would compromise an  
3 active criminal investigation or compromise the health or safety of the person if the person is  
4 under 18 years of age.”

5  
6 Penal Code section 186.34(f) provides that “the person to be designated as a suspected gang  
7 member, associate, or affiliate, or his or her parent or guardian, may submit written  
8 documentation to the local law enforcement agency contesting the designation.”

9  
10 Penal Code section 186.34(g) also provides that “[n]othing in this section shall require a local law  
11 enforcement agency to disclose any information protected under Section 1040 or 1041 of the  
12 Evidence Code or Section 6254 of the Government Code.”

13  
14 *Rule 3.2300 adopted effective January 20, 2017.*

**Request for Review of Denial of Request to Remove Name From Gang Database**

Clerk stamps date here when form is filed.

**Instructions:** Please read the instructions on the back of this form before completing and filing this form.**Notice to the Clerk:** This request is filed under Penal Code section 186.35 and California Rules of Court, rule 3.2300. Rule 3.2300(c) requires the presiding judge of each superior court to designate one or more judges to hear such requests. This request must be submitted to a judge designated under rule 3.2300(c).

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 Name of Person Making This Request:**

- I am:**  The person whose name is in the gang database.  
 The parent or guardian of the child under 18 whose name is in the gang database.

Your lawyer in this case (*if you have one*):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

**Address** (*If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer, give your information.*)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**2 Decision You Are Requesting Be Reviewed**I am seeking review of the attached decision by the following law enforcement agency denying my request under Penal Code section 186.34 to remove my name or the name of my child or ward from a shared gang database. (*You must attach a copy of the written verification that the law enforcement agency served on you of its decision denying your request and fill in the name and address of the law enforcement agency.*)

Name of law enforcement agency: \_\_\_\_\_

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

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

The attached decision was served on me/my client by the law enforcement agency:

- 
- By personal delivery
- 
- By mail    on (
- date:*
- ) \_\_\_\_\_

**3 Reason for This Request for Review**

I am seeking review of the attached decision on the basis that the law enforcement agency has not established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person whose name I requested be removed from the shared gang database.

**4 Written Argument**

- 
- I have attached my written argument about why, based on the record specified in Penal Code section 186.35(b), the law enforcement agency has failed to establish by clear and convincing evidence the gang membership, associate status, or affiliate status of the person whose name I requested be removed from the street gang database.

**NOTE:** *You are not required to submit written argument. If you wish to submit written argument, you can either include that argument in this request or serve and file the argument separately within 15 days after the law enforcement agency serves and files the record in this proceeding. Please see rule 3.2300(f) for information about submitting written argument.*



**5 Request for or Waiver of Oral Argument**

I understand oral argument can be requested in this case. I  am  am not requesting oral argument.

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

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

\_\_\_\_\_  
*Signature*

**Instructions**

This form is only for seeking review by a court of a local law enforcement agency's denial of a request under Penal Code section 186.34 to remove an individual's name from a shared gang database.

You must serve and file this form **no later than 90 calendar days** after the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34 to remove your name from a shared gang database or, if you are the parent or guardian of a child under 18 whose name is in the gang database, the child's name. **If your request is late, your request will be dismissed.**

**To serve and file this form, complete the following steps:**

**1. Fill out this form**

**In the second box on the right-hand side:** Fill in the name of the county for the superior court where you plan to file the request and the street address for the court (see rule 3.2300(d)(3) for information about where to file this form).

**In Item 1:**

Fill in your name.

Check the box to indicate if you are the person whose name is in the gang database or that person's parent or guardian.

Fill in the name and firm name of your lawyer, if you have one.

Fill in your lawyer's contact information, or if you do not have a lawyer, your contact information.

**In Item 2:**

Fill in the name and address of the law enforcement agency whose decision you are requesting the court to review.

Attach a copy of the law enforcement agency's decision denying your request to remove your name or the name of your child or ward from the gang database.

**In Item 4:**

Check whether or not you are attaching written argument to this report.

**In Item 5:**

Indicate whether or not you want to have oral argument on your request or whether you want to give up (waive) oral argument, and have the court decide the case without oral argument.

**At the end of the form:**

Print and sign your name and fill in the date you signed the form.

**2. Make copies of the form**

Make a copy of the completed form for your records and for the law enforcement agency.

**3. Serve the form**

Serve a copy of the completed form and the required attachment on the law enforcement agency 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 at [www.courts.ca.gov/selfhelp-serving.htm](http://www.courts.ca.gov/selfhelp-serving.htm).

**4. File the form**

Take or mail the original completed form with a copy of the law enforcement agency decision attached and proof of service on the law enforcement agency to the clerk's office of the court where you are filing this form. 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.

Pay the \$25 filing fee and file this form, or if you are unable to pay this fee, file a request to waive court fees (form FW-001) in the court.

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** 2/24/2017

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

Civil Practice and Procedures: Writ of Execution, revise forms EJ-130 and MC-012, approve form MC-013-INFO.

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Jenny Wald, 415-865-8713, [jenny.wald@jud.ca.gov](mailto:jenny.wald@jud.ca.gov)

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

Approved by RUPRO: December 15, 2016

Project description from annual agenda: Item 17 - 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 civilunlimited) 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 monetary computation items.

*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.)

A proposal to revise EJ-130 was circulated for public comment in 2016. In light of the comments received on that proposal, the committee revised the proposal and is now seeking to circulate this revised proposal.

# 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

**SPR17-\_\_\_\_\_**

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Title	Action Requested
Civil Practice and Procedure: Writ of Execution	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms EJ-130 and MC-012; approve form MC-013-INFO	January 1, 2018
Proposed by	Contact
Civil and Small Claims Advisory Committee	Jenny Wald, Legal Services
Hon. Raymond M. Cadei, Chair	415-865-8713 <a href="mailto:jenny.wald@jud.ca.gov">jenny.wald@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee is proposing revisions to two forms and approval of a new optional form to facilitate use of the *Writ of Execution* (form EJ-130). The committee's proposal responds to suggestions received over the years, including suggestions made in response to proposed revisions to form EJ-130 that were circulated for comment in 2016.

### Background

Most writs of execution are prepared by parties on the Judicial Council's *Writ of Execution* (form EJ-130) and presented to the court clerk to be issued. Although 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. The committee has received a number of suggestions for revising this form from court administrators, levying officers, private practitioners, and legal aid offices. In 2016, the committee circulated a proposal to revise the form in response to these suggestions.<sup>1</sup> The committee received many comments on the proposal. Some changes proposed in 2016 were well received by commentators. The comments on other changes proposed in 2016 raised additional issues. The committee considered these comments and is now circulating a revised proposal for public comment.

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<sup>1</sup> The Invitation to Comment can be viewed here: <http://www.courts.ca.gov/documents/SPR16-10.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 Proposal**

The committee is proposing changes to three different sections of the *Writ of Execution* (form EJ-130), and one section of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012), which are described below. A proposal for a new optional form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO), is also described below.

### **Proposed Revisions to Form EJ-130**

***Identifier for limited versus unlimited case, check boxes at the top of the form.*** Form EJ-130 was amended a few years ago to implement a bill that required that a writ of execution, possession, or sale to specify, among other things, whether the case is a limited or unlimited civil action. (Code Civ. Proc. § 699.520). The intent of this latter designation is to permit the sheriff to determine what appeals period applies (30 or 60 days) if a claim of exemption is sought by the judgment debtor. In an effort to make the form easier for self-represented litigants to use, check boxes were added to the form, next to the title, to indicate the type of case: limited, unlimited, small claims, or other.

The committee has been informed that 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. The proposal circulated in 2016 included a revision to these check boxes, eliminating the separate check box for small claims cases and revising the check box for limited civil cases to state: "limited cases (including small claims)." It would also have eliminated the "other" check box. This proposed revision was well received by commentators in 2016. This same revision is incorporated into the current proposal. A further proposed minor revision is made to the "unlimited civil case" check box to indicate it includes "family and probate cases." This should help self-represented litigants determine the correct box to check.

***"Attorney For."*** The caption on form EJ-130 currently has the required "ATTORNEY FOR (name)" line. Unlike on other forms, there is currently a check box next to this item in the caption. The purpose of the check box is unclear and may be creating confusion. The committee therefore proposes to delete the check box next to "ATTORNEY FOR" in the caption.

***Item 3, Identifying judgment creditor or assignee of record.*** One of the comments the committee received in response to the proposal circulated in 2016 was that assignees of record are confused about how to fill out item 3 of the form, which currently asks the filer to indicate if he or she is judgment creditor or an assignee of record. The assignees of record consider themselves to be have become the "judgment creditor" by acquiring all rights to an interest in the judgment. Therefore, some of the assignees check both boxes, as judgment creditor and assignee of record, which can cause confusion in the clerk's office. To address this concern, the committee proposes to add the word "original" in front of "judgment creditor" both in item 3 and

in the attorney box at the top of the form. This is intended to clarify that assignees should check only the assignee box.

**Item 4, Identifying type of legal entity.** Another comment received in 2016 suggested that confusion arises because item 4 (and corresponding items 21 and 23b) requires a party to identify, for judgment debtors not a natural person, the type of legal entity “stated in judgment.” That information, while typically listed in the complaint, is not always included in the judgment itself. The statute that led to the addition of this item on the form, Code of Civil Procedure section 699.510(c), does not require that the information regarding type of business entity be found in the judgment. The committee therefore proposes to remove the reference to the type of entity “stated in judgment” from the form.

**Items 11–20, Calculations of amount to enforce judgment.** This section of the EJ-130 form is used to calculate the total amount the levying officer is to collect. The committee has received comments over the past few years that this part of the form is nonintuitive and confusing, particularly for determining how partial payments are credited toward the amount owed, and how interest is to be calculated or credited. The proposal circulated for comment in 2016 included a reorganization of this section of the form. The committee also sought and received comments on whether the current generic references in this section of the form to “memo” and “affidavit” regarding costs should be replaced with references to the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012). Those that responded in 2016 generally agreed that references on the EJ-130 form should be changed to expressly refer to mandatory form MC-012. The committee also received comments suggesting additional revisions and/or new forms to address the calculation of credits to interest and principal when partial payments are made over time and suggesting revisions to form MC-012.

The committee is proposing a number of revisions to this section of form EJ-130 in response to these comments, including:

- Above items 11–20: adding the following heading “*Items 11–17 per form MC-012 or filed affidavit (CCP 685.050, 695.220).*”
- Item 11: changing “Total judgment” to “Total judgment (*as entered or renewed*).”
- Item 12: changing “Costs after judgment” to “Costs after judgment (*CCP 685.090(b)*).”
- Item 14: changing “Credit” to “Credit to principal (*after crediting interest*).”
- Item 16: changing “Interest after judgment” to “Accrued interest (*remaining due*).”

A central problem with the current EJ-130 form is that it instructs the levying officer to add ongoing interest at the legal rate on a “subtotal” that includes the total judgment amount minus *all* credits for payments received. That calculation does not take into consideration whether some of the payments received may have been credited toward the accrued interest. The proposed revisions are intended to respond to this problem by clarifying the calculation of the amounts enforced by the levying officer. These proposed revisions are also intended to correspond to the statutory definitions and revisions proposed, which are discussed below, to the form MC-012. In

addition, as discussed below, the committee is proposing a new form MC-013 that includes information about these calculations.

***Possession of real property.*** Item 24 on form EJ-130, regarding a Writ of Possession of real property, embodies an assumption that the underlying action is one for unlawful detainer. Specifically, item 24 requires the completion of subparts indicating whether a Prejudgment Claim of Right of Possession has been served, even though the law requires service of that form only in an unlawful detainer action. (See Code Civ. Pro. § 715.010(5)–(7).) As a result, 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 form completely.

To address this problem, the committee proposes to revise item 24 to include a check box as to whether or not the underlying action is an unlawful detainer action and, if so, to require that subparts (1) or (2), relating to service of a Prejudgment Claim of Right of Possession, be completed.

***Special Rules for Unlawful Detainers Involving Foreclosed Property.*** Comments were received on the proposal circulated in 2016 urging the committee to revise form EJ-130 to address occupants’ right to remain in possession of real property after a foreclosure. The source this right to retain possession is in Code of Civil Procedure section 1161b. This statute, which sunsets December 31, 2019, gives a periodic tenant 90 days to vacate. (Code Civ. Proc., § 1161b.) A tenant for a fixed term may remain until the expiration of the term, subject to some exceptions. (Code Civ. Proc., § 1161b.) To reflect these rights, the committee proposes the following revisions and additions to form EJ-130 designed to inform both the levying officer and any occupant in possession of the possible right to continued occupancy of real property after an unlawful detainer action on foreclosed property:

- **Adding item 24a (1)(a) to indicate foreclosed property.** To clarify that a tenant may resist eviction up to the point of lockout and advise the levying officer that a tenant may raise a claim for a right of possession up to the time of the enforcement of the writ, the following language has been added to a revised item 24a (1):

“The unlawful detainer resulted from a foreclosure. An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time of lockout, regardless of whether a Prejudgment Claim of Right to Possession was served. (See CCP § 1174.3(a)(2)).”

- **Making the items regarding daily rental value and hearing on objections to enforcement of the judgment applicable in to foreclosed property.** As currently structured, the daily rental value and the date(s) when the court “will hear objections to enforcement of the judgment” are only needed if the Prejudgment Claim of Right to Possession was NOT served in compliance with Code of Civil Procedure section 415.46. The

committee is proposing revisions to indicate that these also apply in the case of a foreclosed property under new item 24a(1)(a).

- **Revisions to NOTICE TO PERSON SERVED.** The NOTICE that appears at the bottom of page 2 of form EJ-130 currently focuses on the negative consequences if one fails to vacate real property. In response to the proposal circulated in 2016, several commentators, noted that, without any mention of a right to remain in foreclosed property, the “person (tenant) served” will not be informed of some important possible rights to resist immediate eviction, including the potential right to remain in possession under Code of Civil Procedure section 1161b. Also, the tenant may object to eviction if no Prejudgment Claim of Right to Possession was served on him or her, and he or she was not named in the judgment (not restricted for foreclosure sales). (See Code Civ. Proc., §§ 415.46, 1174.3(a).) The committee is proposing to revise the NOTICE on form EJ-130 to include additional information about these rights. Because the “person served” is unlikely to understand legal language, the proposed additions to the form attempt to express these rights in plain language.

#### **Proposed Revisions to form MC-012**

To facilitate the use of form EJ-130, and in response to comments received on the proposal circulated in 2016, the committee is proposing the following revisions to form MC-012:

- Item 4: adding an acknowledgment showing how the payments received are being credited first towards *interest* and then to *principal* with a breakdown of these amounts. Currently, this item, “Acknowledgment of Credit,” does not indicate how the “credit” for payments received must be calculated. The computation of the amount of “credit” claimed (i.e., *credit* for payments that reduce the judgment *principal* after crediting interest) is required on item 14 of form EJ-130. (See Code Civ. Proc., § 695.220(c), (d).)
- Item 5: adding a new item, “Principal Remaining Due.” This amount is defined by statute as the “principal amount of the judgment” (including costs after credits) and the computation is required on item 15 of form EJ-130. (See Code Civ. Proc., § 680.300.) By requiring inclusion of this information on form MC-012, which is mandatory, the calculation of the principal balance remaining due is provided by the *declarant* under *penalty of perjury*.
- Item 6 (formerly 5): revising this item clarify that the declaration of “accrued interest” means the amount that has accrued but remains *unpaid and due* at the present date (i.e., after credits for partial satisfactions and other credits). (See Code Civ. Proc., §§ 685.010–685.050, 695.220(c).)

These proposed revisions are intended to show the calculation and breakdown of payments credited towards interest and then towards principal. They are also designed to assist parties in complying with the statutory requirement that the information must be provided to the court on a declaration signed under penalty of perjury. Other revisions are intended to make the language on the form less confusing and more consistent with information requested on the EJ-130.

### **New form MC-013-INFO**

The committee is proposing a new form, *Information Sheet for Calculating Interest and Amount Owed on a Judgment* (form MC-013-INFO) to provide information regarding the amounts that can be recovered by the judgment creditor under the law. The proposed new form also describes how to credit payments received from the debtor towards interest, costs, and judgment principal, and refers the creditor to form MC-012 to request that interest and costs be included in the enforceable amount. In addition the form explains how accrued interest on a judgment is calculated with various formulas and examples, including the steps for crediting partial payments. The proposal for a new form responds to concerns raised by several comments received on the proposal circulated in 2016 that the monetary computation of interest and credits on the EJ-130 form is confusing, particularly for self-represented litigants and where partial payments are made at different times.

### **Alternatives Considered**

The committee considered recommending adoption of the previously circulated revisions to form EJ-130. However, it determined that additional revisions to the items relating to the computation of interest and credits, and other form proposals, are important to facilitate use of form EJ-130 in response to comments received.

### **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. The hope is 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 those systems.

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):

ORIGINAL JUDGMENT CREDITOR  ASSIGNEE OF RECORD

FOR COURT USE ONLY

**DRAFT**

**02/17/17**

**Not Approved by  
Judicial Council**

CASE NUMBER:

**Limited Civil Case**  
(including Small Claims)

**Unlimited Civil Case**  
(including Family and Probate)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

Plaintiff:

Defendant:

EXECUTION (Money Judgment)

**WRIT OF**  POSSESSION OF  Personal Property

SALE  Real Property

**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 accordance with CCP 699.080 or CCP 715.040.

**3. (Name):**  
is the  original 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 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 on sold under a writ of sale.

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

**Items 11–17 per form MC-012 or filed affidavit (CCP 685.050, 695.220)**

<b>11. Total judgment (as entered or renewed)</b>	\$ _____
<b>12. Costs after judgment (CCP 685.090)</b>	\$ _____
<b>13. Subtotal (add 11 and 12)</b>	\$ _____
<b>14. Credit to principal (after crediting interest)</b>	\$ _____
<b>15. Subtotal (subtract 14 from 13)</b>	\$ _____
<b>16. Accrued interest (remaining due) (per CCP 685.050) (not on GC 6103.5 fees)</b>	\$ _____
<b>17. Fee for issuance of writ</b>	\$ _____
<b>18. Total (add 15, 16, and 17)</b>	\$ _____

**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.

- 19. Levying officer:**
- a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) . . . . . \$ \_\_\_\_\_
- b. Pay directly to court costs included in 11 and 17 under (GC 6103.5, 68637; CCP 699.520(i)) . . . . . \$ \_\_\_\_\_

**20.**  The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

[SEAL]

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

**NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.**

Plaintiff: Defendant:	CASE NUMBER:
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21.  Additional judgment debtor (*name, type of legal entity if not a natural person, and last known address*):

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

23.  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 if not a natural person, and last known address of joint debtor:</p> <p style="margin-left: 40px;"> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p>	<p>a. <i>on (date)</i>:</p> <p>b. name, type of legal entity if not a natural person, and last known address of joint debtor:</p> <p style="margin-left: 40px;"> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> </p>
---	---

c.  Additional costs against certain joint debtors are itemized:  Below  On Attachment 23c

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

a.  Possession of real property: The complaint was filed on (*date*):

The action was 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.

(a)  The unlawful detainer resulted from a foreclosure. An occupant not named in the judgment may file a Claim of Right of Possession at any time up to and including the time of lockout, regardless of whether a Prejudgment Claim of Right of Possession was served. (See CCP 1174.3(a)(2).)

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

(3) If the unlawful detainer resulted from a foreclosure under item 24a(1)(a) above, or if the Prejudgment Claim of Right of Possession was not served in compliance with CCP 415.46 under item 24a(2) above, answer the following:

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

(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 24e*) specified in the judgment or supplemental order.

c.  Sale of personal property.

d.  Sale of real property.

e. The property is described:  Below  On Attachment 24e

Plaintiff: Defendant:	CASE NUMBER:
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**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 demand that you turn over 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.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to vacate. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and filing it.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must file the form *Claim of Right to Possession and Notice of Hearing* (form CP10). A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

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 12/13/2016</b> <b>Not Approved by</b> <b>Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff: _____ Defendant: _____	
<b>MEMORANDUM OF COSTS AFTER JUDGMENT, ACKNOWLEDGMENT OF CREDIT, AND DECLARATION OF ACCRUED INTEREST</b>	CASE NUMBER: _____

1. I claim the following costs after judgment incurred within the last two years (indicate if there are multiple items in any category):

	<u>Dates Incurred</u>	<u>Amount</u>
a. Preparing and issuing abstract of judgment	_____	\$ _____
b. Recording and indexing abstract of judgment	_____	\$ _____
c. Filing notice of judgment lien on personal property	_____	\$ _____
d. Issuing writ of execution, to extent not satisfied by Code Civ. Proc. § 685.050 (specify county):	_____	\$ _____
e. Levying officers fees, to extent not satisfied by Code Civ. Proc., § 685.050 or wage garnishment	_____	\$ _____
f. Approved fee on application for order for appearance of judgment debtor, or other approved costs under Code Civ. Proc., § 708.110 et seq.	_____	\$ _____
g. Attorney fees, if allowed by Code Civ. Proc., § 685.040	_____	\$ _____
h. Other: _____ (Statute authorizing cost): _____	_____	\$ _____
i. Total of claimed costs for current memorandum of costs (add items a–h)	_____	\$ _____
2. All previously allowed postjudgment costs	_____	\$ _____
3. <b>Total</b> of all postjudgment costs (add items 1 and 2):	_____	\$ _____

4. **Credits to Interest and Principal:** I acknowledge total payments to date in the amount of: \$ \_\_\_\_\_ (including returns on levy process and direct payments). The payments received are applied first to the amount of accrued interest, and then to the judgment principal (including postjudgment costs allowed) as follows: (1) Credit to accrued interest: \$ \_\_\_\_\_; (2) Credit to judgment principal \$ \_\_\_\_\_.

5. **Principal remaining due:** The amount of judgment principal remaining due is \$ \_\_\_\_\_ . (See Code Civ. Proc., § 680.333.)

6. **Accrued interest remaining due:** I declare interest accruing (at the legal rate) from the date of entry or renewal and on balances from the date of any partial satisfactions (or other credits reducing the principal) remaining due in the amount of \$ \_\_\_\_\_ .

7. I am the:  judgment creditor  agent for the judgment creditor  attorney for the judgment creditor.

I have knowledge of the facts concerning the costs claimed above. To the best of my knowledge and belief, the costs claimed are correct, reasonable, and necessary, and have not been satisfied.

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)

**NOTICE TO THE JUDGMENT DEBTOR**

If this memorandum of costs is filed at the same time as an application for a writ of execution, any statutory costs, not exceeding \$100 in aggregate and not already allowed by the court, may be included in the writ of execution. The fees sought under this memorandum may be disallowed by the court upon a motion to tax filed by the debtor, notwithstanding the fees having been included in the writ of execution. (Code Civ. Proc., § 685.070(e).) A motion to tax costs claimed in this memorandum must be filed within 10 days after service of the memorandum. (Code Civ. Proc., § 685.070(c).)

Short Title:	CASE NUMBER:
--------------	--------------

**PROOF OF SERVICE**

**Mail**       **Personal Service**

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 or business address is:

---

3.  I mailed or personally delivered a copy of the *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* as follows (complete either a or b):

a.  **Mail.** I am a resident of or employed in the county where the mail occurred.

(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 personally delivered a copy as follows.

(1) Name of person served: \_\_\_\_\_

(2) Address where delivered: \_\_\_\_\_

(3) Date delivered: \_\_\_\_\_

(4) Time delivered: \_\_\_\_\_

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)

## INFORMATION SHEET FOR CALCULATING INTEREST AND AMOUNT OWED ON A JUDGMENT

### What can the judgment creditor recover?

Under California law, the amount recoverable by a judgment creditor includes:

- The total amount of the judgment entered by the court (principal), plus costs;
- Costs approved by the court after judgment; and
- Accrued interest on the total amount.

DRAFT

01/24/17

Not Approved by  
Judicial Council

### Costs After Judgment

A judgment creditor is entitled to reimbursement for the “reasonable and necessary” costs of enforcing a judgment. These costs must be reported to the court within two years of the date incurred. Once approved by the court, costs become part of the judgment. (For information on recovering costs and a detailed list of costs that can be recovered, see California Code of Civil Procedure §§ 685.040, 685.050, 685.070(b), and 685.090; see also “Requesting Costs and Interest” below).

### Accrued Interest (*See Code Civ. Proc. §§ 685.010, 685.020(a), and Cal. Const., art. XV, § 1.*)

Interest accrues on unpaid judgment amounts at the legal rate of 10% per year (7% if the judgment debtor is a state or local government entity). Costs approved by the court are included as part of the judgment amount and begin to accrue interest from the date ordered. Also, upon renewal of a judgment, interest begins to accrue on the day the renewed judgment is entered. If the judgment is payable in installments, interest accrues from the date each installment is due.

### Requesting Costs and Interest

To have costs and interest added to the enforceable amount owed, the judgment creditor must file and serve a *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (form MC-012). On this form, the judgment creditor must include the exact amount of all costs and accrued interest. This means the judgment creditor is responsible for calculating the amount of interest that accrues on the judgment. It is useful to update this calculation after receiving payments.

### Crediting payments received

Any payments received by the judgment creditor must be “credited” in a specific order. After specific costs go directly to the levying officer and to the court for fees, the judgment creditor is required to credit payments received first toward *accrued interest* and then toward the *judgment principal* (including costs approved by the court after entry of the judgment).

### Calculation of Interest on Judgment and Amount Due

Following are various formulas and examples to assist with the calculation of interest on a judgment using a 10% interest rate:

- **Calculating Daily Interest on a judgment using 10% interest rate**

Following is the formula for figuring out the amount of interest earned per day on a judgment.

**Formula:** Total amount of judgment owed x 10% (or 0.10) = interest earned per year.

Divide that number by 365 = daily interest earned.

**Example:** Judgment debtor owes the judgment creditor \$5,000 (the “judgment principal”).

$$\$5,000 \times 0.10 = \$500$$

$$\$500/365 = \$1.37 \text{ daily interest}$$

The amount of interest earned will be \$1.37 per day as long as the unpaid amount remains \$5,000.

- **Calculating the Total Amount Due, Including Interest, on the date of payment**

**Step 1:** Calculate the amount of interest owed on the date of payment. This amount will equal the daily interest rate calculated above, multiplied by the number of days since the court entered the final judgment.

- Figure out the total number of days that have passed since the court entered the final judgment up to the day of payment.
- Multiply the total days by the amount of daily interest. The result is the amount of interest owing on the day of payment.

**Example:** Assume \$5,000 judgment was entered on June 1 and paid on September 8. 100 days from the entry of the judgment have passed.

The daily interest is \$1.37 (see above calculation).

$\$1.37 \text{ per day} \times 100 \text{ days} = \$137$  interest owed on the date of payment.

The judgment debtor owes \$137 in interest on the principal of \$5,000 on the date of payment.

**Step 2:** Add the amount of interest that has accrued to the amount of the judgment.

$\$5,000 \text{ judgment amount} + \$137 \text{ interest} = \$5,137$ .

The judgment debtor owes a total of \$5,137 on the 100th day after the court entered the judgment.

- **Applying Partial Payments and Recalculating the Amount Due**

If the judgment debtor does not pay all that is owed at one time, the partial payments the debtor makes are applied to the interest *first* and then to the judgment amount (the principal) owed.

**Example:** After 200 days, the judgment debtor pays \$1,000 on the original judgment principal of \$5,000.

**Step 1: Calculate the amount of interest owed on the date of payment**

**Following the above example:**  $\$1.37 \text{ per day} \times 200 \text{ days}$ . After 200 days, \$274 in interest will have accrued on the \$5,000 judgment ( $200 \text{ days} \times \$1.37 \text{ per day}$ ).

**Step 2: Apply payment to interest**

The debtor paid \$1,000, which must first be used to pay the \$274 of accrued interest.

That leaves a \$726 payment toward the \$5,000 principal ( $\$1,000 - \$274 = \$726$ ).

**Step 3: Apply remainder to principal**

The remaining credit of \$726 is applied to the \$5,000 judgment principal.

( $\$5,000 - \$726 = \$4,274$ ). The judgment debtor now owes \$4,274 on the judgment after crediting the payment.

**Step 4: Calculate the new daily interest rate**

Daily interest would then accrue at a rate of \$1.17/day.

$\$4,274 \times 10\% = \$427.40$  interest earned per year.

$\$427.40/365 = \$1.17$  interest earned per day.

**Step 5: After 100 days, a payment of \$500 is made**

The amount of interest that accrues in the next 100 days:

$100 \text{ days} \times \$1.17 = \$117$

The payment of \$500 must first be credited towards the interest of \$117, a balance of \$383 to be credited against the principal ( $\$500 - \$117 = \$383$ ).

The credit of \$383 is then subtracted from the judgment principal of \$4,274, leaving an unpaid balance of \$3,891.

The new daily interest would then accrue at a rate of \$1.07/day.

$\$3,891 \times 10\% = \$389.10/365$ .

After another 100 days, the amount of accrued interest is \$107 (100 days  $\times$  1.07).

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** 2/24/2017

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

Civil Forms: Modification and Termination of Restraining Orders, approve forms, CH-600, CH-610, CH-620, and CH-630, EA-600, EA-610, EA-620, EA-630, SV-600, SV-610, SV-620, SV-630, WV-600, WV-610, WV-620, WV-630.

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Jenny Wald, 415-865-8713, [jenny.wald@jud.ca.gov](mailto:jenny.wald@jud.ca.gov)

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

Approved by RUPRO: #12, Civil and Small Claims Advisory Committee Annual Agenda

Project description from annual agenda: Develop new Judicial Council forms for the modification and termination of protective orders; Plan Goal: III. Operational Plan Objective: 5; Key Objective Supported; 1. Trial court efficiencies 2. Improved procedures.

*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.)

The proposal is for new forms that will allow parties to request modification or termination of restraining orders.

# 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
Protective Orders: Modification and Termination	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt forms CH-600, CH-610, CH-620, CH-630, EA-600, EA-610, EA-620, EA-630, SV-600, SV-610, SV-620, SV-630, WV-600, WV-610, WV-620, WV-630	January 1, 2018
Proposed by	Contact
Civil and Small Claims Advisory Committee	Jenny Wald
Hon. Raymond M. Cadei, Chair	<a href="mailto:jenny.wald@jud.ca.gov">jenny.wald@jud.ca.gov</a>
	415-865-8713
	Bruce Greenlee
	415-865-7698
	<a href="mailto:bruce.greenlee@jud.ca.gov">bruce.greenlee@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes new forms relating to requests for the modification or termination of restraining orders. These forms will be available for use in proceedings to prevent civil harassment, elder and dependent adult abuse, private post-secondary school violence, and workplace violence.

### Background

The statutes that govern the legal standards and procedures for issuance of restraining orders require that the Judicial Council “shall develop forms, instructions, and rules relating to matters governed by this section.” The statutes also provide that an “order issued after notice and hearing” is “subject to termination or modification” by “further order of the court” upon written stipulation or “request of a party.” (See Code Civ. Proc., §§ 527.6, 527.85; Welf. & Inst. Code § 1567.03).

### The Proposal

- Adopt the forms numbered 600 to serve as the means by which a party asks for a modification or termination order;

*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.*

- Adopt the forms numbered 610 to serve as the means by which a party provides notice of the hearing (and other required notices);
- Adopt the forms numbered 620 to serve as the means by which a party responds to a request to modify or terminate the orders; and
- Adopt the forms numbered 630 as the court order.

***Request to Modify or Terminate Restraining Order (forms numbered 600)***

The forms numbered 600 implement statutory requirements by serving as the means by which a party either protected or restrained by an order after hearing (forms numbered 130) can ask the court to modify or terminate the restraining orders.

***Notice of Hearing to Modify or Terminate Restraining Order (forms numbered 610)***

The forms numbered 610 serve as the means by which a party either protected or restrained by an order after hearing can provide the other party with notice of the hearing of a request for the court to modify or terminate the restraining orders.

***Response to Request for Order Modifying or Terminating Restraining Order (forms numbered 620)***

The forms numbered 620 implement the statutes by serving as the means by which a party protected or restrained by an order after hearing can respond to the request to modify or terminate the restraining orders.

***Order Modifying or Terminating Restraining Order (forms numbered 630)***

The forms numbered 630 implement the statutes by serving as the means by which the court may properly record its order after hearing a request to modify or terminate an order after hearing.

**Alternatives Considered**

The committee considered not taking any action but decided against that option.

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

Self-help centers and court staff may need training to recognize and understand the new forms. The hope is that, once initial training is completed, the new forms will be helpful for parties making the requests and ultimately benefit the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those systems.

## 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?

### Attachments

1. Forms CH-600, CH-610, CH-620, CH-630, EA-600, EA-610, EA-620, EA-630, SV-600, SV-610, SV-620, SV-630, WV-600, WV-610, WV-620, and WV-630, at pages 4– XXX

*Clerk stamps date here when form is filed.*

**DRAFT**  
Not approved by the  
Judicial Council  
02.06.17

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**1 Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b.  Protected person       Restrained person
- c. Your Lawyer (if you have one for this case):  
 Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_
- d. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3 Current Order**

- a. The current order is a/an:  
 Civil Harassment Restraining Order After Hearing (form CH-130)  
 Order Renewing Civil Harassment Restraining Order (form CH-730)
- b. The current order expires on (date): \_\_\_\_\_
- c.  A copy of the current order is attached.

**4  Request to Modify Restraining Order**

- a. I ask the court to modify the current order as follows (specify requested changes referring to the item number in order that you want to change or delete):  
 Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a—Requested Changes" for a title. You may use form MC-025, Attachment.

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**6**  **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 6—Lawyer's Fees and Costs" for a title.

**Notice to the Restrained Person:**

**If you are requesting modification or termination of the restraining order, you must have the protected person personally served with this Request and file a proof of service with the court before the hearing. You may use form CH-200, *Proof of Personal Service*.**

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*

▶ \_\_\_\_\_  
*Sign your name*

**Notice of Hearing on Request to  
 Modify  Terminate  
Civil Harassment Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not Approved  
by the Judicial Council**

Party seeking order completes items ① and ②.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**① Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b. Your Lawyer (if you have one for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_
- c. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**③ Court Hearing**

The judge has set a court hearing date. Court will fill in box below.

**The current restraining order stays in effect unless terminated by the court.**

**Hearing  
Date** →

- Date: \_\_\_\_\_ Time: \_\_\_\_\_ Name and address of court if different from above: \_\_\_\_\_
- Dept.: \_\_\_\_\_ Room: \_\_\_\_\_ \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**To the Party Seeking Order:**

**④ Service**

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party:

- CH-600, Request to Modify/Terminate Civil Harassment Restraining Order;
- CH-610, Notice of Hearing on Request to Modify/Terminate Civil Harassment Restraining Order (this form);
- CH-620, Response to Request to Modify/Terminate Civil Harassment Restraining Order (blank copy).



- The forms must be personally served on the other party \_\_\_\_\_ days before the hearing.
- The forms may be served by mail on the other party or the other party's attorney \_\_\_\_\_ days before the hearing.

The person who serves the forms must fill out either form CH-200, *Proof of Personal Service*, or form CH-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form CH-200-INFO, *What is "Proof of Personal Service"?*

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

**To the Other Party:**

If you wish to make a written response to this request to modify or terminate the current civil harassment restraining order, you may fill out form CH-620, *Response to Request to Modify/Terminate Civil Harassment Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the other party at the address in ① at least \_\_\_\_\_ days before the hearing. Also file form CH-250, *Proof of Service by Mail*, with the court before the hearing.

**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 for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

**—Clerk's Certificate—**

I certify that this *Notice of Hearing on Request to Modify/Terminate Civil Harassment Restraining Order* is a true and correct copy of the original on file in the court.

*Clerk's Certificate*      Date: \_\_\_\_\_  
 [seal]                      Clerk, by \_\_\_\_\_, Deputy

**Response to Request to**  
 **Modify**    **Terminate**  
**Civil Harassment Restraining Order**

Clerk stamps date here when form is filed.

**Use this form to respond to the *Request to Modify or Terminate Civil Harassment Restraining Order* (form CH-600).**

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form CH-250, *Proof of Service by Mail*.

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number:

**Case Number:**

The court will consider your response at the hearing. Write your hearing date, time, and place from form CH-610 item (3) here.

**Hearing Date** → Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**(1) Party Filing Response**

a. Your Full Name: \_\_\_\_\_

b.  Protected person    Restrained person

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

c. 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. Law enforcement officer, give agency information.)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**(2) Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**(3) Response**

a.  I agree to the  Modification  Termination of the order.

b.  I do not agree to the  Modification  Termination  
(Specify why you disagree in Item (4) on page 2.)

c.  I agree to the following orders (specify below or in item (4) on page 2):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**4**  **Reasons I Do Not Agree to the**  **Modification**  **Termination**

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 4—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

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

**5**  **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 5—Lawyer's Fees and Costs" for a title.

b.  I ask the court to deny the request of the other party that I pay his or her lawyer's fees and costs.

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

\_\_\_\_\_  
*Lawyer's name, if you have one*

▶ \_\_\_\_\_  
*Lawyer's signature*

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*

▶ \_\_\_\_\_  
*Sign your name*

**To the Party Filing This Response:**

Have someone age 18 or older—**not you**—mail a copy of this completed form CH-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form CH-250, *Proof of Service by Mail*. Have the person who did the mailing sign the original. Take the signed original Proof of Service form back to the court clerk or bring it with you to the hearing.

**Order on Request to**  
 **Modify**    **Terminate**  
**Civil Harassment Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not approved by the**  
**Judicial Council**

Prevailing party completes items ① and ②.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**① Party Seeking Modification/Termination**

a. Full Name: \_\_\_\_\_

Lawyer (if any for this case):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Address (If this party has a lawyer, give the lawyer's information.  
If the party does not have a lawyer and wants to keep home  
address private, give a different mailing address instead.  
Telephone, fax, or e-mail are not required.)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**② Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**③ Hearing**

There was a hearing on (date): \_\_\_\_\_ at time: \_\_\_\_\_  a.m.  p.m. Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

(Name of judicial officer): \_\_\_\_\_ made the orders at the hearing.

These people were at the hearing:

a.  The party seeking  modification  termination

b.  The party opposing  modification  termination

c.  The lawyer for the party seeking  modification  termination (name): \_\_\_\_\_

d.  The lawyer for the party opposing  modification  termination (name): \_\_\_\_\_

**④ Order**

The request to  modify  terminate the attached

Civil Harassment Restraining Order After Hearing (form CH-130)

Order Renewing Civil Harassment Restraining Order (form CH-730)

originally issued on (date): \_\_\_\_\_ is:

a.  **DENIED.** The order and expiration date remain the same.

**This is a Court Order.**



b.  **DENIED** without prejudice because the other party was not served on time.

c.  **GRANTED.**

(1)  The order is **TERMINATED** as of the date this Order is signed on page 3.

(2)  The order is **MODIFIED** as stated:  Below  On Attachment 4c(2)

(Specify, referring to item numbers in the original order):

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

(3) The order now **EXPIRES** on (date): \_\_\_\_\_ at (time): \_\_\_\_\_

**5**  **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 5.

**6** **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 prevailing party 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 6.

**This is a Court Order.**



**To the Prevailing Party:**

**7 Service of Order**

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

- The other party attended the hearing. **No further service is required.**
- Order Granted**—The other party did not attend the hearing. **Service is required:** This Order:
  - must be personally served on the other party within \_\_\_\_\_ days of the date of this Order.
  - may be served by mail on the other party within 5 days of the date of this Order.
- Order Denied**—The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

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

\_\_\_\_\_  
*Judicial Officer*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
*[seal]*

I certify that this *Order on Request to Terminate Civil Harassment 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.**

**Request to  Modify  Terminate  
Elder or Dependent Adult Abuse  
Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by  
the  
Judicial Council  
02.07.17**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**1 Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b.  Protected person     Restrained person     Conservator/Other
- c. Your Lawyer (if you have one for this case):  
 Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_
- d. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3 Current Order**

- a. The current order is an:  
 Elder or Dependent Adult Abuse Restraining Order After Hearing (form EA-130)  
 Order Renewing Elder or Dependent Adult Abuse Restraining Order (form EA-730)
- b. The current order expires on (date): \_\_\_\_\_
- c.  A copy of the current order is attached.

**4  Request to Modify Restraining Order**

- a. I ask the court to modify the current order as follows (specify requested changes referring to the item number in order that you want to change or delete):  
 Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025, Attachment.

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6  **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 6—Lawyer's Fees and Costs" for a title.

**Notice to the Restrained Person:**

**If you are requesting modification or termination of the restraining order, you must have the protected person personally served with this Request and file a proof of service with the court before the hearing. You may use form EA-200, *Proof of Personal Service*.**

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*

▶ \_\_\_\_\_  
*Sign your name*

**Notice of Hearing on Request to**  
 **Modify**    **Terminate Elder or**  
**Dependent Adult Abuse Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not Approved by Judicial**  
**Council**

Party seeking order completes items ① and ②.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**① Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b. Your Lawyer (if you have one for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_
- c. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**③ Court Hearing**

The judge has set a court hearing date. Court will fill in box below.

**The current restraining order stays in effect unless terminated by the court.**

**Hearing**  
**Date** →

- Date: \_\_\_\_\_ Time: \_\_\_\_\_ Name and address of court if different from above: \_\_\_\_\_
- Dept.: \_\_\_\_\_ Room: \_\_\_\_\_ \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**To the Party Seeking Order:**

**④ Service**

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party:

- EA-600, Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order;
- EA-610, Notice of Hearing on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order (this form);
- EA-620, Response to Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order (blank copy).



- The forms must be personally served on the other party \_\_\_\_\_ days before the hearing.
- The forms may be served by mail on the other party or the other party’s attorney \_\_\_\_\_ days before the hearing.

The person who serves the forms must fill out either form EA-200, *Proof of Personal Service*, or form EA-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form EA-200-INFO, *What is “Proof of Personal Service”?*.

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

**To the Other Party:**

If you wish to make a written response to this request to modify or terminate the current elder or dependent adult abuse restraining order, you may fill out form EA-620, *Response to Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**—mail a copy of it to the other party at the address in ① at least \_\_\_\_\_ days before the hearing. Also file form EA-250, *Proof of Service by Mail*, with the court before the hearing.

**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 for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

**—Clerk's Certificate—**

I certify that this *Notice of Hearing on Request to Modify/Terminate Elder or Dependent Adult Abuse Restraining Order* is a true and correct copy of the original on file in the court.

Clerk’s Certificate      Date: \_\_\_\_\_  
 [seal]                      Clerk, by \_\_\_\_\_, Deputy

**Response to Request to**

**Modify**    **Terminate Elder or  
Dependent Adult Abuse Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by the  
Judicial Council**

**02.07.2017**

**Use this form to respond to the *Request to Modify or Terminate Elder or Dependent Adult Abuse Restraining Order* (form CH-600).**

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form CH-250, *Proof of Service by Mail*.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

The court will consider your response at the hearing. Write your hearing date, time, and place from form EA-610 item (3) here.

**Hearing Date** → Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**(1) Party Filing Response**

a. Your Full Name: \_\_\_\_\_

b.  Protected person    Restrained person    Conservator/Other

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

c. 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. Law enforcement officer, give agency information.)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**(2) Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**(3) Response**

a.  I agree to the  Modification  Termination of the order.

b.  I do not agree to the  Modification  Termination  
(Specify why you disagree in Item (4) on page 2.)

c.  I agree to the following orders (specify below or in item (4) on page 2):

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**4**  **Reasons I Do Not Agree to the**  **Modification**  **Termination**

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 4—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

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

**5**  **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 5—Lawyer's Fees and Costs" for a title.

b.  I ask the court to deny the request of the other party that I pay his or her lawyer's fees and costs.

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

\_\_\_\_\_  
*Lawyer's name, if you have one*

▶ \_\_\_\_\_  
*Lawyer's signature*

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*

▶ \_\_\_\_\_  
*Sign your name*

**To the Party Filing This Response:**

Have someone age 18 or older—**not you**—mail a copy of this completed form EA-620 to the other party or to the other party's lawyer, if any. This is called "service by mail." The person who serves the form by mail must fill out form EA-250, *Proof of Service by Mail*. Have the person who did the mailing sign the original. Take the signed original Proof of Service form back to the court clerk or bring it with you to the hearing.

**Order on Request to**  
 **Modify**    **Terminate Elder or**  
**Dependent Adult Abuse Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

Prevailing party completes items ① and ②.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**① Party Seeking Modification/Termination**

a. Full Name: \_\_\_\_\_

Lawyer (if any for this case):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Address (If this party has a lawyer, give the lawyer's information.  
If the party does not have a lawyer and wants to keep home  
address private, give a different mailing address instead.  
Telephone, fax, or e-mail are not required.

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**② Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**③ Hearing**

There was a hearing on (date): \_\_\_\_\_ at time: \_\_\_\_\_  a.m.  p.m. Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

(Name of judicial officer): \_\_\_\_\_ made the orders at the hearing.

These people were at the hearing:

a.  The party seeking  modification  termination

b.  The party opposing  modification  termination

c.  The lawyer for the party seeking  modification  termination (name): \_\_\_\_\_

d.  The lawyer for the party opposing  modification  termination (name): \_\_\_\_\_

**④ Order**

The request to  modify  terminate the attached

Elder or Dependent Adult Abuse Restraining Order After Hearing (form EA-130)

Order Renewing Elder or Dependent Adult Abuse Restraining Order (form EA-730)

originally issued on (date): \_\_\_\_\_ is:

a.  **DENIED.** The order and expiration date remain the same.

**This is a Court Order.**



b.  **DENIED** without prejudice because the other party was not served on time.

c.  **GRANTED.**

(1)  The order is **TERMINATED** as of the date this Order is signed on page 3.

(2)  The order is **MODIFIED** as stated:  Below  On Attachment 4c(2)

*(Specify, referring to item numbers in the original order):*

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

(3) The order now **EXPIRES** on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_

**5**  **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 5.

**6** **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 prevailing party 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 <i>(City, State, Zip)</i>
_____	_____
_____	_____

Additional law enforcement agencies are listed at the end of this Order on Attachment 6.

**This is a Court Order.**



**To the Prevailing Party:**

**7 Service of Order**

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

- The other party attended the hearing. **No further service is required.**
- Order Granted**—The other party did not attend the hearing. **Service is required:** This Order:
  - must be personally served on the other party within \_\_\_\_\_ days of the date of this Order.
  - may be served by mail on the other party within 5 days of the date of this Order.
- Order Denied**—The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

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

\_\_\_\_\_  
*Judicial Officer*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
*[seal]*

I certify that this *Order on Request to Terminate Elder or Dependent Adult Abuse 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.**

**Request to  Modify  Terminate  
Private Postsecondary School  
Violence Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by the  
Judicial Council  
02.01.2017**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**1 Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b.  Petitioner                       Respondent
- c. Your Lawyer (if you have one for this case):  
 Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_
- d. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3 Current Order**

- a. The current order is a/an:  
 Private Postsecondary School Violence Restraining Order After Hearing (form SV-130)  
 Order Renewing Private Postsecondary School Violence Restraining Order (form SV-730)
- b. The current order expires on (date): \_\_\_\_\_
- c.  A copy of the current order is attached.

**4  Request to Modify Restraining Order**

- a. I ask the court to modify the current order as follows (specify requested changes referring to the item number in order that you want to change or delete):  
 Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025, Attachment.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





---

**Notice to the Respondent:**

**If you are requesting modification or termination of the restraining order, you must have the protected person personally served with this Request and file a proof of service with the court before the hearing. You may use form SV-200, *Proof of Personal Service*.**

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*

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

**Notice of Hearing on Request to**  
 **Modify**    **Terminate Private**  
**Postsecondary School Violence**  
**Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not Approved by Judicial**  
**Council**

*Party seeking order completes items ① and ②.*

**① Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b. Your Lawyer (if you have one for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_
- c. 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**

*Fill in case number:*

**Case Number:**

**② Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**③ Court Hearing**

The judge has set a court hearing date. *Court will fill in box below.*

**The current restraining order stays in effect unless terminated by the court.**

**Hearing**  
**Date** →

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Name and address of court if different from above:  
Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To the Party Seeking Order:**

**④ Service**

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party:

- SV-600, *Request to Modify/Terminate Private Postsecondary School Violence Restraining Order*;
- SV-610, *Notice of Hearing on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (this form);
- SV-620, *Response to Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* (blank copy).



- The forms must be personally served on the other party \_\_\_\_\_ days before the hearing.
- The forms may be served by mail on the other party or the other party's attorney \_\_\_\_\_ days before the hearing.

The person who serves the forms must fill out either form SV-200, *Proof of Personal Service*, or form SV-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form SV-200-INFO, *What is "Proof of Personal Service"?*.

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

Clerk, by \_\_\_\_\_, Deputy

**To the Other Party:**

If you wish to make a written response to this request to modify or terminate the current private postsecondary school violence restraining order, you may fill out form SV-620, *Response to Request to Modify/Terminate Private Postsecondary School Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**— mail a copy of it to the other party at the address in ① at least \_\_\_\_\_ days before the hearing. Also file form SV-250, *Proof of Service by Mail*, with the court before the hearing.

**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 for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

**—Clerk's Certificate—**

I certify that this *Notice of Hearing on Request to Modify/Terminate Private Postsecondary School Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate  
[seal]

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

Clerk, by \_\_\_\_\_, Deputy

**SV-620**

**Response to Request to**

**Modify**    **Terminate Private Postsecondary School Violence Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

**Use this form to respond to the *Request to Modify or Terminate Private Postsecondary School Violence Restraining Order* (form SV-600).**

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in **(2)** below. Use form SV-250, *Proof of Service by Mail*.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-610 item **(3)** here.

**Hearing Date** → Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**1 Party Filing Response**

a. Your Full Name: \_\_\_\_\_

b.  Petitioner       Respondent

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

c. 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. Law enforcement officer, give agency information.*)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**2 Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**3 Response**

a.  I agree to the  Modification  Termination of the order.

b.  I do not agree to the  Modification  Termination  
(*Specify why you disagree in Item (4) on page 2.*)

c.  I agree to the following orders (*specify below or in item (4) on page 2*):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





**Order on Request to**  
 **Modify**    **Terminate**   **Private**  
**Postsecondary School Violence**  
**Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

*Prevailing party completes items ① and ②.*

**① Party Seeking Modification/Termination**

a. Full Name: \_\_\_\_\_

*Lawyer (if any for this case):*

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Address *(If this party has a lawyer, give the lawyer's information. If the party does not have a lawyer and wants to keep home address private, give a different mailing address instead. Telephone, fax, or e-mail are not required.)*

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**② Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**③ Hearing**

There was a hearing on *(date)*: \_\_\_\_\_ at time: \_\_\_\_\_  a.m.  p.m. Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

*(Name of judicial officer)*: \_\_\_\_\_ made the orders at the hearing.

These people were at the hearing:

a.  The party seeking  modification  termination

b.  The party opposing  modification  termination

c.  The lawyer for the party seeking  modification  termination *(name)*: \_\_\_\_\_

d.  The lawyer for the party opposing  modification  termination *(name)*: \_\_\_\_\_

**④ Order**

The request to  modify  terminate the attached

*Private Postsecondary School Violence Restraining Order After Hearing* (form SV-130)

*Order Renewing Private Postsecondary School Violence Restraining Order* (form SV-730)

originally issued on *(date)*: \_\_\_\_\_ is:

a.  **DENIED.** The order and expiration date remain the same.

**This is a Court Order.**



b.  **DENIED** without prejudice because the other party was not served on time.

c.  **GRANTED.**

(1)  The order is **TERMINATED** as of the date this Order is signed on page 3.

(2)  The order is **MODIFIED** as stated:  Below  On Attachment 4c(2)

*(Specify, referring to item numbers in the original order):*

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

(3) The order now **EXPIRES** on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_

5 **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 prevailing party 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 5.

**This is a Court Order.**



**To the Prevailing Party:**

**6 Service of Order**

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

- The other party attended the hearing. **No further service is required.**
- Order Granted**—The other party did not attend the hearing. **Service is required:** This Order
  - must be personally served on the other party within \_\_\_\_\_ days of the date of this Order.
  - may be served by mail on the other party within 5 days of the date of this Order.
- Order Denied**—The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

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

\_\_\_\_\_  
*Judicial Officer*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
*[seal]*

I certify that this *Order on Request to Terminate Private Postsecondary School Violence 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.**

**Request to  Modify  Terminate  
Workplace Violence Restraining  
Order**

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by the  
Judicial Council  
02.07.2017**

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**1 Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b.  Petitioner                       Respondent
- c. Your Lawyer (if you have one for this case):  
 Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_
- d. 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 Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**3 Current Order**

- a. The current order is a/an:  
 Workplace Violence Restraining Order After Hearing (form WV-130)  
 Order Renewing Workplace Violence Restraining Order (form WV-730)
- b. The current order expires on (date): \_\_\_\_\_
- c.  A copy of the current order is attached.

**4  Request to Modify Restraining Order**

- a. I ask the court to modify the current order as follows (specify requested changes referring to the item number in order that you want to change or delete):  
 Check here if there is not enough space for your answer. Attach a sheet of paper and write "Attachment 4a —Requested Changes" for a title. You may use form MC-025, Attachment.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





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**Notice to the Respondent:**

**If you are requesting modification or termination of the restraining order, you must have the protected person personally served with this Request and file a proof of service with the court before the hearing. You may use form WV-200, *Proof of Personal Service*.**

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*



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

**Notice of Hearing on Request to**  
 **Modify**    **Terminate**  
**Workplace Violence Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not Approved by Judicial**  
**Council**

Party seeking order completes items ① and ②.

**① Party Seeking Modification/Termination**

- a. Full Name: \_\_\_\_\_
- b. Your Lawyer (if you have one for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_
- c. 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**

*Fill in case number:*

**Case Number:**

**② Other Party**

- a. Full Name: \_\_\_\_\_
- b. Address (if known): \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**③ Court Hearing**

The judge has set a court hearing date. *Court will fill in box below.*

**The current restraining order stays in effect unless terminated by the court.**

**Hearing**  
**Date** →

- Date: \_\_\_\_\_ Time: \_\_\_\_\_ Name and address of court if different from above: \_\_\_\_\_
- Dept.: \_\_\_\_\_ Room: \_\_\_\_\_ \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**To the Party Seeking Order:**

**④ Service**

Someone age 18 or older—**not you**—must serve a copy of the following forms on the other party:

- WV-600, *Request to Modify/Terminate Workplace Violence Restraining Order*;
- WV-610, *Notice of Hearing on Request to Modify/Terminate Workplace Violence Restraining Order* (this form);
- WV-620, *Response to Request to Modify/Terminate Workplace Violence Restraining Order* (blank copy).



- The forms must be personally served on the other party \_\_\_\_\_ days before the hearing.
- The forms may be served by mail on the other party or the other party's attorney \_\_\_\_\_ days before the hearing.

The person who serves the forms must fill out either form WV-200, *Proof of Personal Service*, or form WV-250, *Proof of Service by Mail*. Have the person who served sign the original. Take the signed original proof-of-service form back to the court clerk for filing or bring it with you to the hearing. For help with personal service, see form WV-200-INFO, *What is "Proof of Personal Service"?*

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

**To the Other Party:**

If you wish to make a written response to this request to modify or terminate the current workplace violence restraining order, you may fill out form WV-620, *Response to Request to Modify/Terminate Workplace Violence Restraining Order*. File the original with the court before the hearing and have someone age 18 or older—**not you**— mail a copy of it to the other party at the address in ① at least \_\_\_\_\_ days before the hearing. Also file form WV-250, *Proof of Service by Mail*, with the court before the hearing.

**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 for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

I certify that this *Notice of Hearing on Request to Modify/Terminate Workplace Violence Restraining Order* is a true and correct copy of the original on file in the court.

Clerk's Certificate Date: \_\_\_\_\_  
 [seal] Clerk, by \_\_\_\_\_, Deputy

**Response to Request to**

**Modify**    **Terminate Private**  
**Workplace Violence Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not Approved by the**  
**Judicial Council**

**Use this form to respond to the *Request to Modify or Terminate Private Postsecondary School Violence Restraining Order (form SV-600)*.**

- Fill out this form and then take it to the court clerk.
- Have someone age 18 or older—**not you**—mail a copy of this form and any attached pages to the other party at the address in (2) below. Use form SV-250, *Proof of Service by Mail*.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-610 item (3) here.

**Hearing Date** → Date: \_\_\_\_\_  
Time: \_\_\_\_\_

Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

**1 Party Filing Response**

a. Your Full Name: \_\_\_\_\_

b.  Petitioner                       Respondent

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

c. 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. Law enforcement officer, give agency information.)

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

**2 Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**3 Response**

a.  I agree to the  Modification  Termination of the order.

b.  I do not agree to the  Modification  Termination  
(Specify why you disagree in Item (4) on page 2.)

c.  I agree to the following orders (specify below or in item (4) on page 2):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





**Order on Request to**  
 **Modify**    **Terminate**   **Workplace**  
**Violence Restraining Order**

*Clerk stamps date here when form is filed.*

**DRAFT**  
**Not Approved by the**  
**Judicial Council**

Prevailing party completes items ① and ②.

**① Party Seeking Modification/Termination**

a. Full Name: \_\_\_\_\_

Lawyer (if any for this case):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Address (If this party has a lawyer, give the lawyer's information.  
If the party does not have a lawyer and wants to keep home  
address private, give a different mailing address instead.  
Telephone, fax, or e-mail are not required.

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Fill in case number:

**Case Number:**

**② Other Party**

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

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

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

E-Mail Address: \_\_\_\_\_

**③ Hearing**

There was a hearing on (date): \_\_\_\_\_ at time: \_\_\_\_\_  a.m.  p.m. Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

(Name of judicial officer): \_\_\_\_\_ made the orders at the hearing.

These people were at the hearing:

a.  The party seeking  modification  termination

b.  The party opposing  modification  termination

c.  The lawyer for the party seeking  modification  termination (name): \_\_\_\_\_

d.  The lawyer for the party opposing  modification  termination (name): \_\_\_\_\_

**④ Order**

The request to  modify  terminate the attached

Workplace Violence Restraining Order After Hearing (form WV-130)

Order Renewing Workplace Violence Restraining Order (form WV-730)

originally issued on (date): \_\_\_\_\_ is:

a.  **DENIED.** The order and expiration date remain the same.

**This is a Court Order.**



- b.  **DENIED** without prejudice because the other party was not served on time.
- c.  **GRANTED**.
  - (1)  The order is **TERMINATED** as of the date this Order is signed on page 3.
  - (2)  The order is **MODIFIED** as stated:  Below  On Attachment 4c(2)

*(Specify, referring to item numbers in the original order):*

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

(3) The order now **EXPIRES** on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_

**5 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 prevailing party 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 <i>(City, State, Zip)</i>
_____	_____
_____	_____

Additional law enforcement agencies are listed at the end of this Order on Attachment 5.

**This is a Court Order.**



**To the Prevailing Party:**

**6 Service of Order**

If service is required, someone age 18 or older—**not you**—must serve a copy of this order on the other party. If a party is represented by a lawyer, you must serve the lawyer instead of the party.

- The other party attended the hearing. **No further service is required.**
- Order Granted**—The other party did not attend the hearing. **Service is required:** This Order:
  - must be personally served on the other party within \_\_\_\_\_ days of the date of this Order.
  - may be served by mail on the other party within 5 days of the date of this Order.
- Order Denied**—The other party did not attend the hearing. **Service by Mail:** The other party may be served with this Order by mail.

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

\_\_\_\_\_  
*Judicial Officer*

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

*Clerk's Certificate*  
*[seal]*

I certify that this *Order on Request to Terminate Workplace Violence 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.**

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** 2/24/2017

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

Protective Orders: Response and Firearms Relinquishment Exemption, Revise Forms CH-120, CH-130, EA-120, EA 130, GV-120, SV-120, SV-130, WV-120, and WV-130.

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Jenny Wald, 415-865-8713, [jenny.wald@jud.ca.gov](mailto:jenny.wald@jud.ca.gov)

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

Approved by RUPRO: #13 and #14, Civil and Small Claims Advisory Committee Annual Agenda

Project description from annual agenda: (1) Revise civil restraining order response forms to provide space for the respondent to state why he or she disagrees with the orders requested by the petitioner; (2) Revise civil restraining order response and order after hearing forms for CH, EA, SV, and WV to provide for the exception to firearms surrender for respondents whose employment requires them to have a firearm; Strategic Goal 1, Access, Fairness, and Diversity; Operational Plan Objective 1: Ensure that all court users are given an opportunity to be heard. See also Strategic Plan Goal: IV, Quality of Justice and Service to the Public; Operational Plan Objective: 1, Foster excellence in public service to ensure that all court users receive satisfactory services and outcomes

*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.)

The proposed revisions to civil restraining order response forms will allow a responding party who disagrees with a petitioner's request to provide an explanation. The proposal for revising the civil restraining order forms is also intended to comply with the statutory exemption, which provides the court discretion to make exceptions to the statutory firearms relinquishment order if a firearm is required by the respondent's employment..

# 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
Protective Orders: Response and Firearms Relinquishment Exemption	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130	January 1, 2018
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei, Chair	Jenny Wald, 415-865-8713 <a href="mailto:jenny.wald@jud.ca.gov">jenny.wald@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revising the civil restraining order forms to allow the court the discretion to make exceptions to the statutory firearms relinquishment order if a firearm is required by the respondent's employment. The committee also proposes revisions to the response forms to requests for restraining orders to provide space on the forms so that if a responding party disagrees with a request, he or she may provide an explanation. The existing forms may be misleading in proceedings governed by statutes that specifically provide that the responding party may file a response with an explanation. This explanatory information would also be helpful to the judicial officer.

### Background

#### Response Forms

The Legislature has mandated that the Judicial Council prescribe the forms and rules relating to matters covered by the statutes that govern proceedings.<sup>1</sup> Currently, the forms to respond to a request for a protective order in all five case types to prevent civil harassment, elder and dependent adult abuse, gun violence, private post-secondary school violence, and workplace violence provide for three check box options: (a) agree; (b) do not agree; or (c) agree to a

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<sup>1</sup> See Code Civ. Proc., §§ 527.6(w)(1) (CH), 527.85(v)(1) (SV), 527.8(v)(1) (WV); Pen. Code, § 18105 (gun violence (GV)); Welf. & Inst. Code, § 15657.03(x) (EA).

*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.*

different specified order. There is no space provided on any of the forms for the responding party to include any explanation if he or she does not agree with the request. These forms may be misleading in proceedings governed by statutes that specifically provide that the responding party may file a response with an explanation. For example, in response to a petition for a civil harassment restraining order, a respondent “may file a response that *explains, excuses, justifies, or denies the alleged harassment.*”<sup>2</sup>

### **Firearms relinquishment exemption**

Code of Civil Procedure section 527.9(f) provides that “[t]he court may, as part of the [firearms] relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm if the respondent can show that [the] firearm is necessary as a condition of continued employment and that the current employer is unable to reassign the respondent to another position where a firearm is unnecessary.” The statute covers civil harassment (CH), elder or dependent adult abuse (EA), private postsecondary school violence (SV), and workplace violence (WV) proceedings. (See Code Civ. Proc., § 527.9(a).) Specific language is provided in the statute to expressly state this exemption in the order. (See Code Civ. Proc. § 527.9(f).) The domestic violence restraining order forms for firearms relinquishment address the exemption and contain the statutory language. This proposal would revise the civil protective order response and order after hearing forms for CH, EA, SV, and WV proceedings to include statutory language that provides for the same exception.

### **The Proposal**

The proposal would create additional space on the following protective order response forms so that if a responding party disagrees with the request, he or she may provide an explanation:

- Form CH-120, *Response to Request for Civil Harassment Restraining Orders*;
- Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*;
- Form GV-120, *Response to Petition for Firearms Restraining Order*;
- Form SV-120, *Response to Petition for Private Postsecondary School Violence Restraining Orders*; and
- Form WV-120, *Response to Petition for Workplace Violence Restraining Orders*.

This proposal would also revise the following forms so that the court may exercise its discretion to grant an exception to the statutory firearm relinquishment order to a responding party who makes the request under Code of Civil Procedure section 527.9(f):

- Form CH-120, *Response to Request for Civil Harassment Restraining Orders*;
- Form CH-130, *Civil Harassment Order After Hearing*;
- Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining*

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<sup>2</sup> (Code Civ. Proc., § 527.6(h)(italics added); (Code Civ. Proc., § 527.85(i) (identical statutory language for SV cases); (Code Civ. Proc., § 527.8(i) (identical statutory language for WV cases); (Welf. & Inst. Code, § 15657.03(g) (similar language for EA cases: may file a response that “explains or denies the alleged abuse”); (Pen. Code, § 18100 et seq. )(no specific mention of response in GV statutes).

*Orders;*

- Form EA-130, *Elder or Dependent Adult Abuse Restraining Order After Hearing;*
- Form SV-120, *Response to Petition for Private Postsecondary School Violence Restraining Orders;*
- Form SV-130, *Private Postsecondary School Violence Restraining Order After Hearing;*
- Form WV-120, *Response to Petition for Workplace Violence Restraining Orders;*  
and
- Form WV-130, *Workplace Violence Restraining Order After Hearing.*

### **Alternatives Considered**

The committee considered not taking any action but decided it would be better to revise the forms as proposed.

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

Self-help centers and court staff may need training to recognize and understand the revised items. The hope is that, once initial training is completed, the revised forms will assist parties in completing the forms correctly and will ultimately benefit the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those 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?

### **Attachments**

1. Forms CH-120, CH-130, EA-120, EA-130, GV-120, SV-120, SV-130, WV-120, and WV-130, at pages 4– XXX

Clerk stamps date here when form is filed.

**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:**

**Use this form to respond to the Request (form CH-100)**

- Read *How Can I Respond to a Request for Civil Harassment Restraining Orders?* (form CH-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 in ① or his or her lawyer by mail with a copy of this form and any attached pages. (Use form CH-250, Proof of Service of Response by Mail.)

**① Person Seeking Protection**

Name of person seeking protection (see form CH-100, item ①):

\_\_\_\_\_

**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: \_\_\_\_\_

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 CH-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. (Specify why you disagree in item ⑪ on page 3.)
- c.  I agree to the following orders (Specify below or in item ⑪ on page 3.)

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

**④  Stay-Away Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. (Specify why you disagree in Item ⑪ on page 3.)
- c.  I agree to the following orders (Specify below or in item ⑪ on page 3.)

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

**⑤  Additional Protected Persons**

- a.  I agree that the persons listed in item ③ of form CH-100 may be protected by the order requested.
- b.  I do not agree that the persons listed in item ③ of form CH-100 may be protected by the order requested.



**6 Guns or Other Firearms and Ammunition**

If you were served with form CH-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. (See item 7 of form CH-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 CH-110. You must file a receipt with the court. You may use form CH-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 ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. (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 6b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.

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- c.  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.

**7 Possession and Protection of Animals**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. (Specify why you disagree in item 11 on page 3.)
- c.  I agree to the following orders (Specify below or in item 11 on page 3).

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**8 Other Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. (Specify why you disagree in item 11 on page 3.)
- c.  I agree to the following orders (Specify below or in item 11 on page 3.)

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**9 Denial**

I did not do anything described in item 7 of form CH-100.



**10**  **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.

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**11**  **Reasons I Do Not Agree to the Orders Requested**

*Explain your answers to each order requested that you do not agree with.*

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 11—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

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**12**  **No Fee for Filing**

- a.  I request that I not be required to pay the filing fee because the person in **1** claims in form CH-100 item **13** to be entitled to free filing.
- b.  I request that I not be required to pay the filing fee because I am eligible for a fee waiver. (*Form FW-001, Request to Waive Court Fees, must be filed separately.*)

**13**  **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 and write "Attachment 13—Lawyer's Fees and Costs" for a title. You may use or form MC-025, Attachment.
- b.  I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

**14** 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.

**DRAFT  
NOT APPROVED BY THE  
JUDICIAL COUNCIL**

Person in ① must complete items ①, ②, and ③ only.

**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 orders indicated below:

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	_____

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. \_\_\_\_\_
- b. This stay-away order does not prevent you from going to or from your home or place of employment.

**This is a Court Order.**



**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.
- d.  The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in **2** is not required to relinquish this firearm *(specify make, model, and serial number of firearm):*  
 The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in **2** may be subject to federal prosecution for possessing or controlling a firearm.

**9  Lawyer's Fees and Costs**

The person in \_\_\_ must pay to the person in \_\_\_ the following amounts for

lawyer's fees       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, color, sex.)*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 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**

Unless item ⑧ is checked, 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.**

Response to Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

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.)

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

- I agree to the orders requested.
I do not agree to the orders requested. (Specify why you disagree in item 12 on page 4.)
I agree to the following orders (Specify below or in item 12 on page 4.)

4 Stay-Away Orders

- I agree to the orders requested.
I do not agree to the orders requested. (Specify why you disagree in item 12 on page 4.)
I agree to the following orders (Specify below or in item 12 on page 4.)



**5**  **Move-Out Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. *(Specify why you disagree in item 12 on page 4.)*
- c.  I agree to the following orders *(Specify below or in item 12 on page 4.)*

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**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 ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. *(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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.*

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- c.  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. *(Specify why you disagree in item 12 on page 4.)*
- c.  I agree to the following orders *(Specify below or in item 12 on page 4.)*

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**12**  **Reasons I Do Not Agree to the Orders Requested**

*Explain your answers to each order requested that you do not agree with.*

*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 12—Reasons I Disagree" as a title. You may use form MC-025, Attachment.*

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

**13**  **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 and write "Attachment 13—Lawyer's Fees and Costs" for a title. You may use form MC-025, Attachment.*

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.

**14** 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*):

\_\_\_\_\_

\_\_\_\_\_ 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.

d.  The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in ② is not required to relinquish this firearm (*specify make, model, and serial number of firearm*):  
 The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in ② may be subject to federal prosecution for possessing or controlling 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, color, sex.*)

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

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 (unless item ⑨d is checked), 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 5. 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.**

Response to Petition for Private Postsecondary School Violence Restraining Orders

Clerk stamps date here when form is filed. DRAFT NOT APPROVED BY THE JUDICIAL COUNCIL

Use this form to respond to the Petition (Form SV-100)

- Read How Can I Respond to a Petition for Private Postsecondary School Violence Restraining Orders? (form SV-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 petitioner or the petitioner’s lawyer by mail with a copy of this form and any attached pages. (Use form SV-250, Proof of Service of Response by Mail.)

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

1 Petitioner (Educational Institution Officer or Employee)

Name:

2 Student Seeking Protection

Full Name:

3 Respondent (Person From Whom Protection Is Sought)

a. Your Name:

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

Name: State Bar No.:

Firm Name:

b. Your Address (you may give a mailing address if you want to keep your street address private; skip this if you have a lawyer):

Address:

City: State: Zip:

Telephone: Fax:

E-Mail Address:

4 Personal Conduct Orders

a. I agree to the orders requested.

b. I do not agree to the orders requested.

(Specify why you disagree in item 11 on page 3.)

c. I agree to the following orders (Specify below or in item 11 on page 3.)

The court will consider your response at the hearing. Write your hearing date, time, and place from form SV-109, item 4 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 three years.

5 Stay-Away Orders

a. I agree to the orders requested.

b. I do not agree to the orders requested. (Specify why you disagree in item 11 on page 3.)

c. I agree to the following orders (Specify below or in item 11 on page 3.)



6  **Additional Protected Persons**

- a.  I agree that the persons listed in item 4 of the Petition may be protected by the order requested.
- b.  I do not agree that the persons listed in item 4 of the Petition may be protected by the order requested.

7  **Firearms Prohibition and Relinquishment**

If you were served with form SV-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. 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 SV-110. (See item 8 of form SV-110.) You must file a receipt with the court. You may use form SV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

- a.  I do not own or control any guns or other firearms.
- b.  I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. (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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.

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

- c.  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  **Other Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. (Specify why you disagree in item 11 on page 3.)
- c.  I agree to the following orders (Specify below or in item 11 on page 3.)

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

9  **Denial**

I did not do anything described in item 8 of form SV-100. (Skip to 11.)





**12**  **No Fee for Filing**

- a.  I ask the court to waive the filing fee because the petitioner claims in form SV-100 item **14** to be entitled to free filing.
- b.  I request that I not be required to pay the filing fee because I am eligible for a fee waiver. (*Form FW-001, Request to Waive Court Fees, must be filed separately.*)

**13**  **Costs**

- a.  I ask the court to order the petitioner to pay my 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 and write "Attachment 13—Costs" for a title. You may use form MC-025, Attachment.*
- b.  I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

**14** 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 is true and correct.

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

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

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

**Private Postsecondary School  
Violence Restraining Order After  
Hearing**

*Clerk stamps date here when form is filed.*

**DRAFT  
NOT APPROVED BY THE  
JUDICIAL COUNCIL**

**1 Petitioner (Educational Institution Officer or Employee)**

a. Name: \_\_\_\_\_  
Lawyer for Petitioner (if any, for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_

b. Your Address (If you have a lawyer, give your lawyer's information.):  
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 Student (Protected Person)**

Full Name: \_\_\_\_\_

**3 Respondent (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: \_\_\_\_\_

**4  Additional Protected Persons**

In addition to the student, the following family or household members or other students 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 student</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	_____

Additional protected persons are listed at the end of this Order on Attachment 4.

**5 Expiration Date**

*This Order, except for any award of lawyer's fees, expires at:*

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**



**6 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 petitioner/school representative *(name)*: \_\_\_\_\_
  - (2)  The lawyer for the petitioner/school *(name)*: \_\_\_\_\_
  - (3)  The student.      (4)  The lawyer for the student *(name)*: \_\_\_\_\_
  - (5)  The respondent.      (6)  The lawyer for the respondent *(name)*: \_\_\_\_\_
  - Additional persons present are listed at the end of this Order on Attachment 6b.
- c.  The hearing is continued. The parties must return to court on *(date)*: \_\_\_\_\_ at *(time)*: \_\_\_\_\_.

**To the Respondent:**

**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.**

**7 Personal Conduct Orders**

- a. You are ordered **not** do the following things to the student
  - and to the other protected persons listed in **4** :
  - (1)  Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
  - (2)  Commit acts of violence or make threats of violence against the person.
  - (3)  Follow or stalk the person during school hours or to or from the school.
  - (4)  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.
  - (5)  Enter the person’s school.
  - (6)  Take any action to obtain the person’s address or locations. If this item is not checked, the court has found good cause not to make this order.
  - (7)  Other *(specify)*:  
 Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- 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.

**This is a Court Order.**



**8 Stay-Away Order**

- a. You **must** stay at least \_\_\_\_\_ yards away from (*check all that apply*):
- (1)  The student.
  - (2)  Each other protected person listed in **4**.
  - (3)  The school.
  - (4)  The student's home.
  - (5)  The student's job or workplace.
  - (6)  The student's children's school.
  - (7)  The student's children's place of child care.
  - (8)  The student's vehicle.
  - (9)  Other (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- b. This stay-away order does not prevent you from going to or from your home or place of employment.

**9 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:
- (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 have been turned in, sold, or stored. (*You may use form SV-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.
- d.  The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in **3** is not required to relinquish this firearm (*specify make, model, and serial number of firearm*):  
 The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in **3** may be subject to federal prosecution for possessing or controlling a firearm.

**10 Costs**

You must pay the following amounts for costs to the petitioner:

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

Additional amounts are attached at the end of this Order on Attachment 10.

**This is a Court Order.**



**11**  **Other Orders** (*specify*):

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

Additional orders are attached at the end of this Order on Attachment 11.

**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 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 Respondent**

- a.  The respondent personally attended the hearing. No other proof of service is needed.
- b.  The respondent did not attend the hearing.
  - (1)  Proof of service of form SV-110, *Temporary Restraining Order*, was presented to the court. The judge’s orders in this form are the same as in form SV-110 except for the expiration date. The respondent 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 SV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

**14** **No Fee to Serve (Notify) Restrained Person**

If the sheriff or marshal will serve this Order without charge because the Order is based on a credible threat of violence or stalking.

**15** Number of pages attached to this Order, if any: \_\_\_\_\_

The Order is based on actual violence, a credible threat of violence, or stalking.  
 The petitioner is entitled to a fee waiver.

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



\_\_\_\_\_  
*Judicial Officer*

**This is a Court Order.**



## Warning and Notice to the Respondent:

### You Cannot Have Guns or Firearms

Unless item ⑨ is checked, 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 Order System (CARPOS). Agencies are encouraged to enter violation messages into 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 ⑤ on page 1.

### 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).)

### 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.

**This is a Court Order.**



Case Number:

*Clerk's Certificate*  
[seal]

*(Clerk will fill out this part.)*  
**—Clerk's Certificate—**

I certify that this *Private Postsecondary School Violence 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.*

**DRAFT  
NOT APPROVED BY THE  
JUDICIAL COUNCIL**

**Use this form to respond to the *Petition* (form WV-100)**

- Read *How Can I Respond to a Petition for Workplace Violence Restraining Orders?* (form WV-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 petitioner or the petitioner’s lawyer by mail with a copy of this form and any attached pages. (*Use form WV-250, Proof of Service of Response by Mail.*)

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in case number:*

**Case Number:**

**1 Petitioner (Employer)**

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

**2 Employee Seeking Protection**

Full Name: \_\_\_\_\_

**3 Respondent (Person From Whom Protection Is Sought)**

a. Your Name: \_\_\_\_\_

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Your Address (*you may give a mailing address if you want to keep your street address private; skip this if you have a lawyer*):

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

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

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**4  Personal Conduct Orders**

a.  I agree to the orders requested.

b.  I do not agree to the orders requested.

*(Specify why you disagree in item 11 on page 3.)*

c.  I agree to the following orders (*Specify below or in item 11 on page 3.*)

\_\_\_\_\_

**5  Stay-Away Orders**

a.  I agree to the orders requested.

b.  I do not agree to the orders requested. (*Specify why you disagree in item 11 on page 3.*)

c.  I agree to the following orders (*Specify below or in item 11 on page 3.*)

\_\_\_\_\_

The court will consider your response at the hearing. Write your hearing date, time, and place from form WV-109, item 4 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 three years.



6  **Additional Protected Persons**

- a.  I agree that the persons listed in item 4 of the Petition may be protected by the order requested.
- b.  I do not agree that the persons listed in item 4 of the Petition may be protected by the order requested.

7  **Firearms Prohibition and Relinquishment**

If you were served with form WV-110, *Temporary Restraining Order*, you cannot own or possess any guns, other firearms, or ammunition. 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 WV-110. (See item 8 of form WV-110.) You must file a receipt with the court. You may use form WV-800, *Proof of Firearms Turned In, Sold, or Stored* for the receipt.

- a.  I do not own or control any guns or other firearms.
- b.  I ask for an exemption from the firearms prohibition under Code of Civil Procedure section 527.9(f) because carrying a firearm is a condition of my employment, and my employer is unable to reassign me to another position where a firearm is unnecessary. (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 7b—Firearms Surrender Exemption" as a title. You may use form MC-025, Attachment.

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- c.  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  **Other Orders**

- a.  I agree to the orders requested.
- b.  I do not agree to the orders requested. (Specify why you disagree in item 11 on page 3.)
- c.  I agree to the following orders (Specify below or in item 11 on page 3.)

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9  **Denial**

I did not do anything described in item 8 of form SV-100. (Skip to 11.)





**12**  **No Fee for Filing**

- a.  I ask the court to waive the filing fee because the petitioner claims in form WV-100 item **14** to be entitled to free filing.
- b.  I request that I not be required to pay the filing fee because I am eligible for a fee waiver. (*Form FW-001, Request to Waive Court Fees, must be filed separately.*)

**13**  **Costs**

- a.  I ask the court to order the petitioner to pay my 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 and write "Attachment 13—Costs" for a title. You may use form MC-025, Attachment.*
- b.  I ask the court to deny the request of the person asking for protection that I pay his or her lawyer's fees and costs.

**14** 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 is true and correct.

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

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

▶ \_\_\_\_\_  
*Sign your name*

Clerk stamps date here when form is filed.

**DRAFT  
NOT APPROVED BY THE  
JUDICIAL COUNCIL**

**1 Petitioner (Employer)**

a. Name: \_\_\_\_\_  
Lawyer for Petitioner (if any, for this case):  
Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
Firm Name: \_\_\_\_\_

b. Your Address (If you have a lawyer, give your lawyer's information):  
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 Employee (Protected Person)**

Full Name: \_\_\_\_\_

**3 Respondent (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 Employee: \_\_\_\_\_

**4 Additional Protected Persons**

In addition to the employee, the following family or household members or other students are protected by the temporary orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Employee
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Additional protected persons are listed at the end of this Order on Attachment 4.

**5 Expiration Date**

This Order, except for any award of lawyer's fees, expires at:

Date: \_\_\_\_\_ Time: \_\_\_\_\_  a.m.  p.m.

If no expiration date is written here, this Order expires three years from the date of issuance.

**This is a Court Order.**



**6 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 petitioner/employer representative *(name)*: \_\_\_\_\_
  - (2)  The lawyer for the petitioner/employer *(name)*: \_\_\_\_\_
  - (3)  The employee      (4)  The lawyer for the employee *(name)*: \_\_\_\_\_
  - (5)  The respondent      (6)  The lawyer for the respondent *(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 Respondent:**

**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.**

**7 Personal Conduct Orders**

- a. You are ordered **not** do the following things to the employee
  - and to the other protected persons listed in **4**:
  - (1)  Harass, molest, strike, assault (sexually or otherwise), batter, abuse, destroy personal property of, or disturb the peace of the person.
  - (2)  Commit acts of violence or make threats of violence against the person.
  - (3)  Follow or stalk the person during work hours or while going to or from the place of work.
  - (4)  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.
  - (5)  Enter the person's workplace.
  - (6)  Take any action to obtain the person's address or locations. If this item is not checked, the court has found good cause not to make this order.
  - (7)  Other *(specify)*:
    - Other personal conduct orders are attached at the end of this Order on Attachment 7a(7).
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
    - \_\_\_\_\_
- 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.

**This is a Court Order.**



**8 Stay-Away Order**

- a. You **must** stay at least \_\_\_\_\_ yards away from (*check all that apply*):
- (1)  The employee.
  - (2)  Each other protected person listed in **(4)**.
  - (3)  The employee’s workplace.
  - (4)  The employee’s home.
  - (5)  The employee’s school.
  - (6)  The employee’s children’s school.
  - (7)  The employee’s children’s place of child care.
  - (8)  The employee’s vehicle.
  - (9)  Other (*specify*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- b. This stay-away order does not prevent you from going to or from your home or place of employment.

**9 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:
- (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 have been turned in, sold, or stored. (*You may use form WV-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.
- d.  The court has made the necessary findings and applies the firearm relinquishment exemption under Code of Civil Procedure section 527.9(f). Under California law, the person in **(3)** is not required to relinquish this firearm (*specify make, model, and serial number of firearm*):  
 The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in **(3)** may be subject to federal prosecution for possessing or controlling a firearm.

**10**  **Costs**

You must pay the following amounts for costs to the petitioner:

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

Additional amounts are attached at the end of this Order on Attachment 10.

**This is a Court Order.**



**11**  **Other Orders** (*specify*):

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

Additional orders are attached at the end of this Order on Attachment 11.

**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 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 Respondent**

- a.  The respondent personally attended the hearing. No other proof of service is needed.
- b.  The respondent did not attend the hearing.
  - (1)  Proof of service of form WV-110, *Temporary Restraining Order*, was presented to the court. The judge’s orders in this form are the same as in form WV-110 except for the expiration date. The respondent 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 WV-110. Someone—but not the petitioner or anyone protected by this order—must personally serve a copy of this Order on the respondent.

**14** **No Fee to Serve (Notify) Restrained Person**

The sheriff or marshal will serve this Order without charge because the Order is based on unlawful violence, a credible threat of violence, or stalking.

**15** Number of pages attached to this Order, if any: \_\_\_\_\_

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

▶ \_\_\_\_\_

*Judicial Officer*

**This is a Court Order.**



## Warning and Notice to the Respondent:

### You Cannot Have Guns or Firearms

Unless item ⑨ is checked, 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 Order System (CARPOS). Agencies are encouraged to enter violation messages into 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 ⑤ on page 1.

### 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).)

### 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.

**This is a Court Order.**



Case Number:

*Clerk's Certificate*  
[seal]

*(Clerk will fill out this part.)*

**—Clerk's Certificate—**

I certify that this *Workplace Violence 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.**

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** 2/24/2017

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

Civil Forms: Requests for "Immediate Civil Restraining Orders," Revise forms CH-100, EA-100, GV-100, SV-100, and WV-100

*Committee or other entity submitting the proposal:*

Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Jenny Wald, 415-865-8713, [jenny.wald@jud.ca.gov](mailto:jenny.wald@jud.ca.gov)

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

Approved by RUPRO: Not approved by RUPRO

Project description from annual agenda: The Civil and Small Claims Advisory Committee is proposing RUPRO approve this as a new project to be added to its 2017 Annual Agenda: "Revise Item on Restraining Order Request Forms Re: Requests for 'Immediate Orders'" as a priority item 1(e), "urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public," with a January 1, 2018, completion date.

*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.)

To authorize the Civil and Small Claims Advisory Committee's work on this project, it is asking for the approval of RUPRO to add the project to the annual agenda. (See memorandum to RUPRO). After the Protective Orders subcommittee met on October 28, 2016, it proposed five items for the committee's 2017 Annual Agenda, which the committee approved at its meeting on November 17, 2016. However, one of those items (this proposal) was inadvertently omitted from the materials transmitted to RUPRO prior to its meeting on December 15, 2016. The proposal would make technical revisions to forms CH-100, EA-100, GV-100, SV-100 and WV-100, which comply with statutory requirements, so the petitioner may indicate affirmatively if they are requesting a temporary order "with notice." The proposal would also make a minor change on the forms to change the term "immediate orders" to "temporary orders."

# 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
Protective Orders: Requests for Immediate Orders	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms CH-100, EA-100, GV-100, SV-100, and WV-100	January 1, 2018
Proposed by	Contact
Civil and Small Claims Advisory Committee	Jenny Wald, 415-865-8713
Hon. Raymond M. Cadei, Chair	<a href="mailto:jenny.wald@jud.ca.gov">jenny.wald@jud.ca.gov</a>
	Bruce Greenlee, 415-865-7698
	<a href="mailto:bruce.greenlee@jud.ca.gov">bruce.greenlee@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes revisions to all protective order forms to allow parties requesting temporary restraining orders to indicate if the request is being made “with notice.”

### Background

The statutes governing the various protective order proceedings provide that a temporary restraining order may be issued with or without notice. (See, e.g., Code Civ. Proc., §§ 527(c), 527.6(d).) For example, item 11 on form CH-100, *Request for Civil Harassment Restraining Orders*, is currently drafted in a way that may be confusing: it asks petitioners to check a box to respond either “Yes” or “No” as to whether they are requesting that “Immediate Orders” be made *without* notice.<sup>1</sup> However, nowhere on the form can the petitioner affirmatively request “Immediate Orders” *with* notice. (*Ibid.*) Form EA-100, item 15, has the identical issue.<sup>2</sup> Likewise, forms SV-100 and WV-100, items 12, also ask the petitioner to check a box “Yes” or “No” if requesting “Immediate Orders Without Notice.”<sup>3</sup> Similarly, form GV-100, item 9, asks

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<sup>1</sup>The current form CH-100 can be viewed at [www.courts.ca.gov/documents/ch100.pdf](http://www.courts.ca.gov/documents/ch100.pdf).

<sup>2</sup>The form EA-100 can be viewed at [www.courts.ca.gov/documents/ea100.pdf](http://www.courts.ca.gov/documents/ea100.pdf).

<sup>3</sup>Forms SV-100 and WV-100 can be viewed at [www.courts.ca.gov/documents/sv100.pdf](http://www.courts.ca.gov/documents/sv100.pdf) and [www.courts.ca.gov/documents/wv100.pdf](http://www.courts.ca.gov/documents/wv100.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 petitioner to check a box “Yes” or “No” answering whether he or she is requesting an “Immediate Temporary Order” without notice.

A proposed minor revision to the language of this item has also been made, so all -100 numbered forms use the word *Temporary* instead of *Immediate*. The reason for using the word *Immediate* in the first place, instead of *Temporary* or *Ex Parte*, was to address concerns about plain language. In reviewing these forms, the committee has reconsidered the language and noted that domestic violence forms use the term *temporary orders*. *Temporary orders* is also the term used in the statutes governing civil harassment, elder abuse, school violence, and work violence cases. (See, e.g., Code Civ. Proc., § 527.6(b)(6).)

### **The Proposal**

- Revise forms CH-100, item 11; EA-100, item 15; GV-100, item 9; SV-100, item 12; and WV-100, item 12, so the petitioner may indicate affirmatively if he or she is requesting a temporary order “with notice”; and
- Revise “Immediate Orders” on the CH and EA forms; “Request for Immediate Orders Without Notice” on the SV and WV forms; and “Request for Immediate Temporary Order” on the GV form, to read “Temporary Restraining Order.”

### **Alternatives Considered**

The committee considered not taking any action but decided to revise the forms as proposed.

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

Self-help centers and clerks may need training to recognize and understand the revised forms. The hope is that, once initial training is completed, the revised forms will be helpful for parties and clerks and ultimately benefit the courts. Should the forms be issued as part of electronic case management systems, the electronic forms will need to be revised within those 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?

### **Attachments**

1. Proposed forms CH-100, EA-100, GV-100, SV-100, WV-100, at pages 3–XX

Clerk stamps date here when form is filed.

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.

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

**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.**



7 a. (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.

Horizontal lines for writing the answer to question 7a(3).

(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.

Horizontal lines for writing the answer to question 4.

(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.

Horizontal lines for writing the answer to question 5.

(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)

Me The person in 2 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.

Horizontal lines for writing the answer to question 7b.

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**  **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the person in **(2)**. I am presenting form CH-110, *Temporary Restraining Order*, for the court's signature together with this *Request*.

Do you want the court to issue the Temporary Restraining Order 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—Temporary Restraining Order" 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  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 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, color, sex.)*

\_\_\_\_\_

I request sole possession of the animals because *(specify good cause for granting order)*:

- 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 15a—Possession of Animals" for a title.

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

- 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 16—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.

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**  
**02.07.2017**

**1 Elder or Dependent Adult in Need of Protection**

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.: \_\_\_\_\_

c.  Other (name) \_\_\_\_\_

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

Court fills in case number when form is filed.

**Case Number:****4 Contact Information**

Contact information for the person asking the court for protection:

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and 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**

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 5b—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.**



10 b. (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.

Blank lines for answer to question 10b(5)

(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.

Blank lines for answer to question 10b(6)

(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):

the person in 1 the person in 2 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.

Blank lines for answer to question 10c

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.

Blank lines for answer to question 10d

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 13b—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**  **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the person in **2**. I am presenting form EA-110, *Temporary Restraining Order*, for the court's signature together with this *Request*.

Do you want the court to issue the Temporary Restraining Order 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—Temporary Restraining Order" 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 on the next page:

**This is not a Court Order.**



**16**  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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**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  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 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, color, sex.)

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I request sole possession of the animals because (specify good cause for granting order):

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 19a—Possession of Animals" for a title.

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- 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.

Read *Can a Firearms Restraining Order Help Me?* (form GV-100-INFO) before completing this form.

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

**1 Petitioner**

a. Your Full Name: \_\_\_\_\_

I am:  A family member of the Respondent  
 A law enforcement officer employed by  
 (name of law enforcement agency): \_\_\_\_\_

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

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

c. 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. Law enforcement officer, give agency information.)

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 Respondent**

Full Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address (if known): \_\_\_\_\_

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

**3 Venue**

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

a.  The Respondent lives in this county.b.  Other (specify): \_\_\_\_\_**4 Other Court Cases**

a. Are you aware of any other court cases, civil or criminal, involving the Respondent?

Yes  No *If yes, on the next page, check each kind of case and give as much information as you know as to where and when each was filed:*

**This is not a Court Order.**

4	Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(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"/> Workplace Violence	_____	_____	_____
(8)	<input type="checkbox"/> Criminal	_____	_____	_____
(9)	<input type="checkbox"/> Other (specify): _____	_____	_____	_____

b. Are there now any protective or restraining orders in effect relating to Respondent?  
 Yes  No  I don't know *If yes, attach a copy if you have one.*

**5 Description of Respondent's Firearms**

*If you have reason to believe that the respondent is in possession of firearms, answer (a) or check (b).*

a.  I am informed, and on that basis believe, that Respondent currently possesses or controls the following firearms and ammunition. *(Describe the number, types, and locations of any firearms and ammunition that you believe that the Respondent currently possesses or controls):*

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

b.  I am informed, and on that basis believe, that Respondent currently possesses or controls firearms and ammunition, but I have no further specific information as to the number, types, and locations of those firearms and and ammunition.

**6 Grounds for Issuance of a Firearms Restraining Order**

I have reasonable cause to believe both of the following are true:

a. The Respondent poses a significant danger in the near future of causing personal injury to himself, herself, or another person by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm.

**This is not a Court Order.**



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

*You must have your papers personally served on Respondent at least five calendar days before the hearing, unless the court orders a shorter time for service. (Form GV-200-INFO explains What Is "Proof of Personal Service"? Form GV-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:

Reasons stated in Attachment 10.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**11** 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.

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

Read *How do I Get a Private Postsecondary School Violence Restraining Order?* (form SV-100-INFO) before completing this form. Also fill out *Confidential CLETS Information* (form CLETS-001) with as much information as you know.

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 Petitioner (Educational Institution Officer or Employee)**

- a. Name: \_\_\_\_\_ is
  - the chief administrative officer
  - an officer or employee designated by the chief administrative officer to maintain order on the campus or facility of (name of private postsecondary educational institution): \_\_\_\_\_

and is filing this petition on behalf of the student in **2**.

- b. Lawyer for Petitioner (if any for this case):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_  
 Firm Name: \_\_\_\_\_

- c. Petitioner's Address (if the petitioner has a lawyer, give the lawyer's information):

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

**2 Student in Need of Protection**

Full Name: \_\_\_\_\_  
 Sex:  M  F Age: \_\_\_\_\_

**3 Respondent (Person From Whom Protection Is Sought)**

Full Name: \_\_\_\_\_ Age: \_\_\_\_\_  
 Address (if known): \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**4 Additional Protected Persons**

- a. Are you asking for protection for any family or household members or any other students at the campus or facility who are similarly in need of protection?  Yes  No (If yes, list them):

<u>Full Name</u>	<u>Sex</u>	<u>Age</u>	<u>Household Member?</u>	<u>Relationship to Student</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	_____

Additional protected persons are listed in Attachment 4a.

**This is not a Court Order.**



4 b. Why do these people need protection? (*Explain*):  Response is stated in Attachment 4b.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5 **Relationship of Student and Respondent**

a. How does the student know the respondent? (*Describe*):  Response is stated in Attachment 5a.

\_\_\_\_\_

\_\_\_\_\_

b. Respondent  is  is not a current student of petitioner's institution. (*Explain any decision to retain, expel, or otherwise discipline the respondent*):  Response is stated in Attachment 5b.

\_\_\_\_\_

\_\_\_\_\_

6 **Venue**

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

a.  The respondent lives in this county.

b.  The respondent has caused physical or emotional injury to the student in this county.

c.  Other (*specify*): \_\_\_\_\_

7 **Other Court Cases**

a. Has the student or any of the persons named in 4 been involved in another court case with the respondent?  
 No  Yes (*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"/> Postsecondary School Violence	_____	_____	_____
(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 Support	_____	_____	_____
(6)	<input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(7)	<input type="checkbox"/> Eviction	_____	_____	_____
(8)	<input type="checkbox"/> Guardianship	_____	_____	_____
(9)	<input type="checkbox"/> Workplace Violence	_____	_____	_____
(10)	<input type="checkbox"/> Small Claims	_____	_____	_____
(11)	<input type="checkbox"/> Criminal	_____	_____	_____
(12)	<input type="checkbox"/> Other ( <i>specify</i> ): _____	_____	_____	_____

b. Are any restraining orders or criminal protective orders now in effect relating to the student or any of the persons in 4 and the respondent?  No  Yes (*If yes, attach a copy if you have one.*)

**This is not a Court Order.**





- 8 f. For any of the incidents described above, did the police come?  Yes  No  I don't know  
 If yes, did the student or the respondent receive an Emergency Protective Order?  
 Yes  No  I don't know  
 If yes, the order protects (*check all that apply*)  
 the student.  the respondent.  one or more of the persons in 4.  
 (*Attach a copy of the order if you have one.*)

**Check the orders you want.**

9 **Personal Conduct Orders**

I ask the court to order the respondent **not** to do any of the following things to the student or to any person to be protected listed in 4:

- 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.  Make threats of violence against the person.
- c.  Follow or stalk the person during school hours or to or from the school campus or facility.
- d.  Contact the person, either directly or indirectly, by **any** means, 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.
- e.  Enter the person's school campus or facility.
- f.  Other (*specify*):  
 As stated in Attachment 9f.

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

*The respondent 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.*

10 **Stay-Away Order**

a. I ask the court to order the respondent to stay at least \_\_\_\_\_ yards away from (*check all that apply*):

- (1)  The student.
- (2)  The other persons listed in 4.
- (3)  The school.
- (4)  The student's home.
- (5)  The student's job or workplace.
- (6)  The school of the student's children.
- (7)  The place of child care of the student's children.
- (8)  The student's vehicle.
- (9)  Other (*specify*):

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

**This is not a Court Order.**



- 10 b. If the court orders the respondent 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):  
 Response is stated on Attachment 10b.

11 **Guns or Other Firearms and Ammunition**

Does the respondent own or possess any guns or other firearms?  Yes  No  I don't know

*If the judge grants a protective order, the respondent 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 respondent 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.*

12  **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the Respondent. I am presenting form SV-110, *Temporary Restraining Order*, for the court's signature together with this Petition.

Do you want the court to issue the Temporary Restraining Order without notice to the Respondent?

Yes  No (If you answered yes, explain why below):

Reasons are stated in Attachment 12.

13  **Request for Less Than Five Days' Notice**

*You must have your papers personally served on the respondent at least five days before the hearing, unless the court orders a shorter time for service. (Form SV-200-INFO explains what is proof of personal service. Form SV-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:

Reasons are stated in Attachment 13.

14  **No Fee for Filing**

I ask that there be no filing fee because the respondent has threatened violence against the student, or stalked the student, or acted or spoken in a manner that has placed the student in reasonable fear of violence.

**This is not a Court Order.**



**15**  **No Fee to Serve Orders**  
I ask the court to order the sheriff or marshal to serve the respondent with the others for free because this request for orders is based on a credible threat of violence or stalking.

**16**  **Court Costs**  
I ask the court to order the respondent to pay my court costs.

**17**  **Additional Orders Requested**  
I ask the court to make the following additional orders (*specify*):

Additional orders requested are stated in Attachment 17.

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

**18** Number of pages attached to this form, if any: \_\_\_\_\_

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

\_\_\_\_\_  
*Lawyer's name (if any)*

▶ \_\_\_\_\_  
*Lawyer's signature*

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

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

\_\_\_\_\_  
*Name of petitioner*

▶ \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

I consent to the filing of the Petition.

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

\_\_\_\_\_  
*Name of student*

▶ \_\_\_\_\_  
*Signature*

**This is not a Court Order.**

**Petition for Workplace Violence Restraining Orders**

*Clerk stamps date here when form is filed.*

Read *How Do I Get an Order to Prohibit Workplace Violence* (form WV-100-INFO) before completing this form. **NOTE: Petitioner must be an employer with standing to bring this action under Code of Civil Procedure section 527.8.** Also fill out *Confidential CLETS Information* (form CLETS-001) with as much information as you know.

**DRAFT**  
**Not approved by the**  
**Judicial Council**  
**02.07.2017**

**1 Petitioner (Employer)**

a. Name: \_\_\_\_\_

is a  corporation  sole proprietorship

(specify): \_\_\_\_\_

and is filing this suit on behalf of the employee identified in item 2.

b. Lawyer for Petitioner (if any for this case):

Name: \_\_\_\_\_ State Bar No.: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Petitioner's Address (if the petitioner has a lawyer, give the lawyer's information):

c. 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 Employee in Need of Protection**

Full Name: \_\_\_\_\_

Sex:  M  F Age: \_\_\_\_\_

**3 Respondent (Person From Whom Protection Is Sought)**

Full Name: \_\_\_\_\_ Age: \_\_\_\_\_

Address (if known): \_\_\_\_\_

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

**4 Additional Protected Persons**

a. Are you asking for protection for any family or household members of the employee or for any other employees at the employee's workplace or at other workplaces of the petitioner?

Yes  No (If yes, list them):

Full Name	Sex	Age	Household Member?	Relationship to Employee
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

Additional protected persons are listed in Attachment 4a.

**This is not a Court Order.**



- 4 b. Why do these people need protection? (*Explain*):  
 Response is stated in Attachment 4b.

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

5 **Relationship of Employee and Respondent**

- a. How does the employee know the respondent? (*Describe*):  Response is stated in Attachment 5a.

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

- b. Respondent  is  is not a current employee of petitioner. (*Explain any decision to retain, terminate, or otherwise discipline the respondent*):  Response is stated in Attachment 5b.

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

6 **Venue**

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

- a.  The respondent lives in this county.  
 b.  The respondent has caused physical or emotional injury to the petitioner's employee in this county.  
 c.  Other (*specify*): \_\_\_\_\_

7 **Other Court Cases**

- a. Has the employee or any of the persons named in 4 been involved in another court case with the respondent?

No  Yes *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"/> Workplace Violence	_____	_____	_____
(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 Support	_____	_____	_____
(6)	<input type="checkbox"/> Eviction	_____	_____	_____
(7)	<input type="checkbox"/> Guardianship	_____	_____	_____
(8)	<input type="checkbox"/> Small Claims	_____	_____	_____
(9)	<input type="checkbox"/> Postsecondary School Violence	_____	_____	_____
(10)	<input type="checkbox"/> Criminal	_____	_____	_____
(11)	<input type="checkbox"/> Other ( <i>specify</i> ): _____	_____	_____	_____

- b. Are any restraining orders or criminal protective orders now in effect relating to the employee or any of the persons in 4 and the respondent?  No  Yes (*If yes, attach a copy if you have one.*)

**This is not a Court Order.**



**8 Description of Respondent's Conduct**

a. Respondent has (*check one or more*):

- (1)  Assaulted, battered, or stalked the employee
- (2)  Made a credible threat of violence against the employee by making knowing or willful statements or engaging in a course of conduct that would place a reasonable person in fear for his or her safety or the safety of his or her immediate family.

b. One or more of these acts (*check either or both*):

- (1)  Took place at the employee's workplace
- (2)  Can reasonably be construed to be carried out in the future at the employee's workplace

Address of workplace: \_\_\_\_\_  
\_\_\_\_\_

c. Describe what happened. (*Provide details; include the dates of all incidents beginning with the most recent; tell who did what to whom; identify any witnesses*):

Response is stated in Attachment 8c.

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d. Was the employee harmed or injured?  Yes  No (*If yes, describe harm or injuries*):

Response is stated in Attachment 8d.

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

e. Did the respondent use or threaten to use a gun or any other weapon?  Yes  No (*If yes, describe*):

Response is stated in Attachment 8e.

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

**This is not a Court Order.**



8 f. For any of the incidents described above, did the police come?  Yes  No  I don't know

If yes, did the employee or the respondent receive an Emergency Protective Order?

Yes  No  I don't know

If yes the order protects (*check all that apply*)

the employee  the respondent  one or more of the persons in 4.

Attach a copy of the order if you have one.

**Check the orders you want**

9  **Personal Conduct Orders**

I ask the court to order the respondent **not** to do any of the following things to the employee or to any person to be protected listed in 4:

- 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.  Commit acts of unlawful violence on or make threats of violence to the person.
- c.  Follow or stalk the person during work hours or to or from the place of work.
- d.  Contact the person, either directly or indirectly, by **any** means, 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.
- e.  Enter the person's workplace.
- f.  Other (*specify*):  
 As stated in Attachment 9f.

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

*The respondent 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.*

10 **Stay-Away Order**

a. I ask the court to order the respondent to stay at least \_\_\_\_\_ yards away from (*check all that apply*):

- (1)  The employee.
- (2)  The other persons listed in 4 .
- (3)  The employee's workplace.
- (4)  The employee's home.
- (5)  The employee's school.
- (6)  The school of the employee's children.
- (7)  The place of child care of the employee's children.
- (8)  The employee's vehicle.
- (9)  Other (*specify*):

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

**This is not a Court Order.**



- 10 b. If the court orders the respondent 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):
- Response is stated on Attachment 10b.

11 **Guns or Other Firearms and Ammunition**

Does the respondent own or possess any guns or other firearms?  Yes  No  I don't know

*If the judge grants a protective order, the respondent 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 respondent 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.*

12  **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the Respondent. I am presenting form WV-110, *Temporary Restraining Order*, for the court's signature together with this Petition.

Do you want the court to issue the Temporary Restraining Order without notice to the Respondent?

Yes  No (If you answered yes, explain why below):

Reasons are stated in Attachment 12.

13  **Request for Less Than Five Days' Notice**

*You must have your papers personally served on the respondent at least five days before the hearing, unless the court orders a shorter time for service. (Form WV-200-INFO explains what is proof of personal service. Form WV-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:

Reasons are stated in Attachment 13.

14  **No Fee for Filing**

I ask that there be no filing fee because the respondent has threatened violence against the employee, or stalked the employee, or acted or spoken in a manner that has placed the employee in reasonable fear of violence.

**This is not a Court Order.**



**15**  **No Fee to Serve Orders**

I ask the court to order the sheriff or marshal to serve the respondent with the others for free because this request for orders is based on a credible threat of violence or stalking.

**16**  **Court Costs**

I ask the court to order the respondent to pay my court costs.

**17**  **Additional Orders Requested**

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

Additional orders requested are stated in Attachment 17.

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

**18** Number of pages attached to this form, if any: \_\_\_\_\_

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

\_\_\_\_\_  
*Lawyer's name (if any)*

▶ \_\_\_\_\_  
*Lawyer's signature*

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

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

\_\_\_\_\_  
*Name of petitioner*

▶ \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Title*

**This is not a Court Order.**

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259

*Committee or other entity submitting the proposal:*

Information Technology Advisory Committee (ITAC)

*Staff contact (name, phone and e-mail):* Andrea Jaramillo, 916-263-0991 [andrea.jaramillo@jud.ca.gov](mailto:andrea.jaramillo@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 9, 2017.

Project description from annual agenda: ITAC's Annual Agenda Item 8

Modernize Rules of Court for the Trial Courts to Modernize Trial Court Rules to Support E-Business

In collaboration with other advisory committees, continue review of rules and statutes in a systematic manner and develop recommendations for more comprehensive changes to align with modern business practices (e.g., eliminating paper dependencies).

*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.)

In recommending the proposal, the Information Technology Advisory Committee worked in cooperation with the Civil and Small Claims Advisory Committee.

# 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 SPR17-08

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Title	Action Requested
Technology: Rules Modernization Project	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259	January 1, 2018
Proposed by	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary and Origin

As part of the Rules Modernization Project, the Information Technology Advisory Committee recommends amending several rules related to electronic service and electronic filing found in title 2, division 3, chapter 2 of the California Rules of Court. The proposed amendments are intended to improve the organization of the rules, improve the rules' consistency with the Code of Civil Procedure, and reduce redundancies between the rules and the Code of Civil Procedure.

### 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 Court so that they will be consistent with and foster modern e-business practices. Over the past two years, ITAC has worked with other advisory committees to address language in the rules that was incompatible with existing statutes and rules governing electronic filing and service, and has also worked on more in-depth examinations of any statutes and rules that may hinder electronic filing, electronic service, and modern e-business practices. The work of the Rules Modernization Project continues this year.

*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 proposal includes amendments that would:

- Ensure consistency and reduce redundancy between the rules and Code of Civil Procedure section 1010.6 (section 1010.6), which provides statutory authority for permissive and mandatory electronic service and filing in the courts;
- Accommodate changes to section 1010.6 and the addition of Code of Civil Procedure section 1013b (section 1013b) in legislation that the Judicial Council will be sponsoring in 2017 (effective January 1, 2018, if signed into law); and
- Make limited organizational changes to the rules to improve their logical ordering.

### **Ensure consistency and reduce redundancy between the rules and Judicial Council–sponsored legislation that amends section 1010.6 and adds section 1013b to the Code of Civil Procedure**

In 2017, the Judicial Council will be sponsoring legislation to amend section 1010.6 and enact section 1013b in the Code of Civil Procedure. (Judicial Council of Cal., Adv. Com. Rep., *Judicial Council–Sponsored Legislation: Electronic Filing, Service, and Signatures* (Oct. 28, 2016).<sup>1</sup>) If passed, the amendments to section 1010.6 will:

- Authorize electronic filing and service by and on persons other than parties,
- Authorize electronic signatures on electronically filed documents,
- Provide for a consistent effective date of filing across courts and case types,
- Codify the effective date of electronic service,
- Consolidate mandatory electronic filing provisions,
- Codify mandatory electronic service provisions, and
- Codify protections for self-represented persons.

If passed, section 1013b will:

- Codify the trial court rule governing proof of electronic service.

ITAC recommends amending title 2, division 3, chapter 2 of the California Rules of Court to ensure consistency and reduce redundancy between the rules and the amended and new provisions of the Code of Civil Procedure.

***Add provisions related to electronic filing and service by or on a nonparty.*** The Judicial Council–sponsored legislation amending section 1010.6 authorizes electronic filing by and electronic service by and on “other persons” rather than just parties. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 9–12.). To ensure that the trial court rules are consistent with this change, the proposal amends rules 2.250–2.253 and 2.257 to reference “other persons” in addition to parties.

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<sup>1</sup> The legislative proposal was approved as part of the consent agenda of the Judicial Council’s December meeting. (Judicial Council of Cal., agenda (Dec. 16, 2016), <https://jcc.legistar.com/View.ashx?M=A&ID=463484&GUID=8E4B8E76-2D88-480D-843A-6576CC996914> (as of Dec. 27, 2016)).

“Other person” was intentionally not defined in section 1010.6 because comprehensively identifying those who fall in the category of “other person” who may be involved in a case without being a party would be overly complicated and variable. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp.7–8.) However, in a few instances in the rules, the addition of “other person” without any limiting language may result in an overly broad scope or confusion. Accordingly, ITAC recommends using limiting language to provide clarity. For example, under the proposed amendment to rule 2.251(e), governing maintenance of electronic service lists, a court would need to “maintain and make available electronically to the parties or other persons in the case an electronic service list. . .” (Italics added.) This would ensure that the electronic service list does not need to be made available to all other persons in the world who might request it, but rather is limited to other persons involved in the case. In addition, under the proposed amendment to rule 2.251(f)(1), governing service by parties and other persons, “parties and other persons that have consented to or are required to serve documents electronically are responsible for electronic service on all other parties and other persons required to be served in the case.” (Italics added.) The purpose of the limiting language here is to ensure the scope of responsibility for performing electronic service is not overly broad. Even if an “other person” agreed to electronic service, there is no obligation created by electronic service rules to electronically serve that particular document on the “other person” if that person is not someone required to be served a particular document.

***Add provisions for electronic signatures on electronically filed documents.*** The Judicial Council–sponsored legislation amending section 1010.6 authorizes the use of electronic signatures on electronically filed documents signed under penalty of perjury. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 2–3, 10–11.) To remain consistent with section 1010.6, the proposal amends rule 2.257, governing requirements for signatures on documents, to include a provision for electronic signatures.

Section 1010.6 leaves the creation of specific procedures, standards, or guidelines under the authority of the Judicial Council. ITAC recommends including an advisory committee comment to explain that the guidelines will be contained in the *Trial Court Records Manual*. The Court Executives Advisory Committee will be developing the standards.

***Eliminate references to “close of business” and “regular filing hours” for effective date of electronic filing and service.*** The Judicial Council–sponsored legislation amending section 1010.6 establishes a consistent effective date of filing and service across courts and case types. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 3–4, 10–11.) Under the legislation, documents received electronically by a court between 12:00 a.m. and 11:59:59 p.m. on a court day are deemed filed on that court day. (*Id.* at p. 11.) Similarly, documents served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day are deemed served on that court day. (*Id.* at p. 10.) To remain consistent with section 1010.6, the proposal eliminates the definition of “close of business” under rule 2.250(b)(10), governing definitions. In addition, the proposal eliminates references to close of business in rule 2.251, which relates to electronic service, and rules 2.253

and 2.259, which relate to electronic filing. Finally, the proposal eliminates the definition of and references to “regular filing hours” found in rules 2.250(b)(9), 2.254(b), and 2.259(d).

***Eliminate mandatory electronic filing and service fee provisions that will become redundant.***

The Judicial Council–sponsored legislation amending section 1010.6 strikes the provision that authorizes a mandatory electronic filing and service pilot project in the Superior Court of Orange County and replaces it with language authorizing mandatory electronic filing and service by local rule in any court. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 4, 11.) The fee provisions in rule 2.253(b)(5)–(6) will be duplicative of section 1010.6 and are largely eliminated in favor of a succinct provision that any fees charged by a court or electronic filing service provider shall be consistent with section 1010.6.

***Eliminate provisions governing proof of electronic service that will become redundant.*** The Judicial Council–sponsored legislation adds section 1013b to the Code of Civil Procedure, which will codify proof of electronic service requirements that had previously been addressed only in the California Rules of Court. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 6–7, 13.) Most of the language in section 1013b is taken directly from rule 2.251(i) (relettered (j) in the proposal). Because section 1013b will fill the statutory gap that the rule had been filling, the proposal eliminates provisions that are duplicative of section 1013b.

**Ensure consistency, reduce redundancy, and improve clarity between the rules internally, and between the rules and section 1010.6, irrespective of Judicial Council–sponsored legislation**

Regardless of whether the Judicial Council–sponsored legislation amending section 1010.6 is passed this year, there are areas of the rules where amendments can improve internal consistency and clarity as well as reduce redundancy with existing provisions of section 1010.6.

***Clarify that issuances by a court can fall within the definition of “document.”*** Section 1010.6(a)(3) allows the court to electronically serve “any document issued by the court.” However, Section 1010.6 does not define “document.” Rather, rule 2.250(b) provides a definition but currently does not include any documents issued by a court within its scope. The proposal adds that a notice, order, judgment, or other issuance by the court is included in the definition of “document.”

***Reorganize rules on electronic filing and electronic service required by court order.*** Section 1010.6(c) authorizes courts to require parties to file and serve documents electronically by court order in certain types of cases. Under the rules, both electronic filing and electronic service required by court order are addressed in rule 2.253(c). However, the heading of rule 2.253, “Permissive electronic filing, mandatory electronic filing, and electronic filing by court order,” indicates that only electronic filing is within its scope. Rule 2.251, “Electronic service,” includes some provisions for electronic service by court order but is not comprehensive, as additional provisions are located in rule 2.253. To resolve this inconsistency and improve clarity, the

proposal adds a new subdivision (d) to rule 2.251 concerning electronic service by court order. In addition, the scope of subdivision (c) of rule 2.253 is narrowed to encompass only electronic filing by court order to keep it topically consistent with the rest of the rule.

***Eliminate rule provisions that are duplicative of section 1010.6.*** Owing to the historical development of the rules and section 1010.6 (with the rules sometimes preceding the statutes in addressing electronic filing and electronic service), duplicative provisions exist between the two. The proposal eliminates some rule provisions that duplicate those in section 1010.6. The benefit of eliminating redundant provisions is that the Judicial Council will not need to make rule amendments to replicate changes to section 1010.6. In turn, this will reduce the risk of the rules and section 1010.6 becoming inconsistent with one another.

Specifically, the proposal eliminates provisions for the extension of time associated with electronic service under rule 2.251(h) (relettered (i) under the proposal) as those provisions merely duplicate section 1010.6(a)(4)(A). The proposal also eliminates those provisions in rule 2.252(c)(1) on the legal effect of documents filed electronically that duplicate those in section 1010.6(b)(1).

The proposal does not eliminate the definitions of “electronic service,” “electronic transmission,” and “electronic notification” that are the same as those in section 1010.6. Rule 2.250(b) provides a more comprehensive scheme of definitions than does section 1010.6 and includes terms that are undefined in that section (e.g., the term “document”). However, ITAC requests specific comments on whether to retain the terms and definitions that are duplicative of those in section 1010.6.

***Amend fee provisions to be more consistent with section 1010.6.*** Rule 2.255 provides for contracting between the courts and electronic filing service providers (EFSPs). Rule 2.255(b) allows permissible provisions of any such contract to include “reasonable fees” charged by an EFSP and “reasonable requirements” imposed by the EFSP for users to access the electronic filing system. The proposal splits rule 2.255(b) into two subdivisions: (b)(1) contains the same permissive language that existed in the rule previously, and (b)(2) includes a new mandatory provision that the contract must comply with the requirements of section 1010.6. The proposal will help avoid any gaps between what a contract may provide and what it must provide. Effective January 1, 2017, any fees an EFSP charges for processing a payment for filing fees and other court fees “shall not exceed the costs incurred for processing the payment.” (§ 1010.6(b)(7).) Existing rule 2.255(b) does not take this specific requirement into account. Retaining the permissive language in the proposal continues to allow “reasonable fees” to be charged and for providers to make “reasonable requirements,” but adding in the mandatory piece places a limit. The mandatory piece refers back to section 1010.6 generally, rather than duplicating specific language such as the new limit on fees for processing a payment in section 1010.6(b)(7). This is to avoid redundancy with existing section 1010.6, and inconsistency with amendments to section 1010.6 that the Legislature may make in the future.

Finally, rule 2.252, which provides general rules for electronic filing, includes permissive language on whether a court permits applications for fee waivers in proceedings in which the court accepts electronic filings. Under rule 2.252(f), a court “may” permit the application to be filed electronically. This is inconsistent with section 1010.6(b)(6), which states, “The court *shall* permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, *as part of the process involving the electronic filing of a document.*” (Italics added.) Accordingly, the proposal amends rule 2.252(f) to reflect section 1010(b)(6)’s requirement that courts to allow the application for fee waiver to be filed electronically in any proceeding in which the court accepts electronic filings.

***Clarify responsibilities of electronic filers.*** Rule 2.256 governs the responsibilities of electronic filers. Under the existing rules, as a condition of electronic filing, an electronic filer must “[f]urnish one or more electronic service addresses, in the manner specified by the court, at which the electronic filer agrees to accept service.” (Rule 2.256(a)(4).) The proposal strikes the phrase “at which the electronic filer agrees to accept electronic service” because, by definition, an electronic service address *is* an electronic address through which one has authorized electronic service. (Rule 2.250(b)(5) [defining “electronic service address”].)

In addition, the proposal adds the following limitation to rule 2.256(a)(4): “This only applies when the electronic filer has consented to or is required to accept electronic service.” Under rule 2.251(b)(1)(B), the act of electronically filing a document acts as consent to receive electronic service except with self-represented parties, who must affirmatively consent to receive electronic service. Accordingly, a self-represented party may be an electronic filer but may not have the responsibility to provide an electronic service address because he or she has not affirmatively consented to receive electronic service. Accordingly, the rule amendment is intended to clarify which electronic filers have the responsibility to furnish an electronic service address. Similarly, under rule 2.256(a)(5), an electronic filer must “[i]mmediately provide the court and all parties with any change to the electronic filer’s electronic service address.” The proposal adds that “[t]his only applies when the electronic filer has consented to or is required to accept electronic service” to clarify the scope of electronic filers that must provide such notice.

### **Alternatives Considered**

If the Judicial Council–sponsored legislation on electronic filing and electronic service is enacted in 2017, the committee believes many of the proposed rule changes will be necessary to avoid inconsistency. Other changes, though not strictly necessary, would improve and clarify the rules. Hence, alternatives to the proposed changes were not considered appropriate.

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

The advisory committee expects that the rule proposal will provide greater clarity in the rules for parties, attorneys, courts, and other court users, and improved consistency between the rules and the Code of Civil Procedure.

## **Request for Specific Comments**

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

Section 1010.6 and rule 2.250(b) contain definitions of “electronic service,” “electronic transmission,” and “electronic notification.” The rule 2.250(b) definitions mirror the section 1010.6 definitions, but the rule provides a more comprehensive scheme of definitions than does section 1010.6. The advisory committee retained the duplicative definitions to preserve this comprehensive scheme.

With respect to the definitions of “electronic service,” “electronic transmission,” and “electronic notification” in rule 2.250(b), the advisory committee seeks comments on whether it should:

- Continue to include the terms and their definitions in the rules;
- Eliminate the terms and their definitions;
- Retain the terms, but refer back to section 1010.6 for the definitions (e.g., “‘Electronic service’ has the same meaning as defined in Code of Civil Procedure section 1010.6”); or
- Modify the definitions in some other way.

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259, at pages 8–27.

Rules 2.250, 2.251, 2.252, 2.253, 2.254, 2.255, 2.256, 2.257, and 2.259 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Rule 2.250. Construction and definitions**

2  
3 (a) \* \* \*

4  
5 (b) **Definitions**

6  
7 As used in this chapter, unless the context otherwise requires:

- 8  
9 (1) A “document” is a pleading, a paper, a declaration, an exhibit, or another  
10 filing submitted by a party or other person, or by an agent of a party or other  
11 person on the party’s or other person’s behalf. A document is also a notice,  
12 order, judgment, or other issuance by the court. A document may be in paper  
13 or electronic form.  
14  
15 (2) “Electronic service” is service of a document on a party or other person by  
16 either electronic transmission or electronic notification. Electronic service  
17 may be performed directly by a party or other person, by an agent of a party  
18 or other person, including the party’s or other person’s attorney, through an  
19 electronic filing service provider, or by a court.  
20  
21 (3) “Electronic transmission” means the transmission of a document by  
22 electronic means to the electronic service address at or through which a party  
23 or other person has authorized electronic service.  
24  
25 (4) “Electronic notification” means the notification of a party or other person that  
26 a document is served by sending an electronic message to the electronic  
27 service address at or through which the party or other person has authorized  
28 electronic service, specifying the exact name of the document served and  
29 providing a hyperlink at which the served document can be viewed and  
30 downloaded.  
31  
32 (5) “Electronic service address” ~~of a party~~ means the electronic address at or  
33 through which the party or other person has authorized electronic service.  
34  
35 (6) An “electronic filer” is a party or other person filing a document in electronic  
36 form directly with the court, by an agent, or through an electronic filing  
37 service provider.  
38  
39 (7) “Electronic filing” is the electronic transmission to a court of a document in  
40 electronic form. For the purposes of this chapter, this definition concerns the  
41 activity of filing and does not include the processing and review of the  
42 document, and its entry into the court records, which are necessary for a  
43 document to be officially filed.

1  
2 (8) An “electronic filing service provider” is a person or entity that receives an  
3 electronic filing from a party or other person for retransmission to the court  
4 or for electronic service on other parties or persons, or both. In submission of  
5 filings, the electronic filing service provider does so on behalf of the  
6 electronic filer and not as an agent of the court.

7  
8 ~~(9) “Regular filing hours” are the hours during which a court accepts documents~~  
9 ~~for filing at its filing counter.~~

10  
11 ~~(10) “Close of business” is 5 p.m. or any other time on a court day at which the~~  
12 ~~court stops accepting documents for filing at its filing counter, whichever is~~  
13 ~~earlier. The court must provide notice of its close of business time~~  
14 ~~electronically. The court may give this notice in any additional manner it~~  
15 ~~deems appropriate.~~

#### 16 17 **Advisory Committee Comment**

18  
19 The definition of “electronic service” has been amended to provide that a party may effectuate  
20 service not only by the electronic transmission of a document, but also by providing electronic  
21 notification of where a document served electronically may be located and downloaded. This  
22 amendment is intended to modify the rules on electronic service to expressly authorize electronic  
23 notification as a legally effective alternative means of service to electronic transmission. This  
24 rules amendment is consistent with the amendment of Code of Civil Procedure section 1010.6,  
25 effective January 1, 2011, to authorize service by electronic notification. (See Stats. 2010, ch. 156  
26 (Sen. Bill 1274).) The amendments change the law on electronic service as understood by the  
27 appellate court in *Insyst, Ltd. v. Applied Materials, Inc.* (2009) 170 Cal.App.4th 1129, which  
28 interpreted the rules as authorizing electronic transmission as the only effective means of  
29 electronic service.

#### 30 31 **Rule 2.251. Electronic service**

##### 32 33 **(a) Authorization for electronic service**

34  
35 When a document may be served by mail, express mail, overnight delivery, or fax  
36 transmission, the document may be served electronically under Code of Civil  
37 Procedure section 1010.6 and the rules in this chapter.

##### 38 39 **(b) Electronic service by consent of the parties**

40  
41 (1) Electronic service may be established by consent ~~of the parties in an action.~~  
42 A party or other person indicates that the party or other person agrees to  
43 accept electronic service by:

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(A) Serving a notice on all parties or other persons that the party or other person accepts electronic service and filing the notice with the court. The notice must include the electronic service address at which the party or other person agrees to accept service; or

(B) Electronically filing any document with the court. The act of electronic filing is evidence that the party or other person agrees to accept service at the electronic service address the party or other person has furnished to the court under rule 2.256(a)(4). This subparagraph (B) does not apply to self-represented parties or other self-represented persons; they must affirmatively consent to electronic service under subparagraph (A).

(2) A party or other person that has consented to electronic service under (1) 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 or other person in the case, until such time as the party or other person designates a different agent for service.

**(c) Electronic service required by local rule or court order**

(1) A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

(2) A court may require other persons to serve documents electronically in specified actions by local rule, as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter.

~~(3)~~(2) Except when personal service is otherwise required by statute or rule, a party or other person that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties or persons, unless:

(A) The court orders otherwise, or

(B) The action includes parties or persons that are not required to file or serve documents electronically, including self-represented parties or other self-represented persons; those parties or other persons are to be served by non-electronic methods unless they affirmatively consent to electronic service.

1           (4)(3)Each party or other person that is required to serve and accept service of  
2           documents electronically must provide all other parties or other persons in the  
3           action with its electronic service address and must promptly notify all other  
4           parties, other persons, and the court of any changes under ~~(f)~~(g).

5  
6   **(d) Additional provisions for electronic service required by court order**

7  
8           (1) If a court has adopted local rules for permissive electronic filing, then the court  
9           may, on the motion of any party or on its own motion, provided that the order  
10           would not cause undue hardship or significant prejudice to any party, order all  
11           parties in any class action, a consolidated action, a group of actions, a  
12           coordinated action, or an action that is complex under rule 3.403 to serve all  
13           documents electronically, except when personal service is required by statute or  
14           rule.

15  
16           (2) A court may combine an order for mandatory electronic service with an order  
17           for mandatory electronic filing as provided in rule 2.253(c).

18  
19           (3) If the court proposes to make any order under (1) on its own motion, the court  
20           must mail notice to any parties that have not consented to receive electronic  
21           service. The court may electronically serve the notice on any party that has  
22           consented to receive electronic service. Any party may serve and file an  
23           opposition within 10 days after notice is mailed, electronically served, or such  
24           later time as the court may specify.

25  
26           (4) If the court has previously ordered parties in a case to electronically serve  
27           documents and a new party is added that the court determines should also be  
28           ordered to do so under (1), the court may follow the notice procedures under (2)  
29           or may order the party to electronically serve documents and in its order state  
30           that the new party may object within 10 days after service of the order or by  
31           such later time as the court may specify.

32  
33   **~~(d)~~(e) Maintenance of electronic service lists**

34  
35           A court that permits or requires electronic filing in a case must maintain and make  
36           available electronically to the parties or other persons in the case an electronic  
37           service list that contains the parties' or other persons' current electronic service  
38           addresses, as provided by the parties or other persons that have filed electronically  
39           in the case.  
40

1 **~~(e)~~(f) Service by the parties and other persons**

2  
3 (1) Notwithstanding ~~(d)~~(e), parties and other persons that have consented to or  
4 are required to serve documents electronically are responsible for electronic  
5 service on all other parties and other persons required to be served in the  
6 case. A party or other person may serve documents electronically directly, by  
7 an agent, or through a designated electronic filing service provider.

8  
9 (2) A document may not be electronically served on a nonparty unless the  
10 nonparty consents to electronic service or electronic service is otherwise  
11 provided for by law or court order.

12  
13 **~~(f)~~(g) Change of electronic service address**

14  
15 (1) A party or other person whose electronic service address changes while the  
16 action or proceeding is pending must promptly file a notice of change of  
17 address electronically with the court and must serve this notice electronically  
18 on all other parties and all other persons required to be served.

19  
20 (2) A party's or other person's election to contract with an electronic filing  
21 service provider to electronically file and serve documents or to receive  
22 electronic service of documents on the party's or other person's behalf does  
23 not relieve the party or other person of its duties under (1).

24  
25 (3) An electronic service address is presumed valid for a party or other person if  
26 the party or other person files electronic documents with the court from that  
27 address and has not filed and served notice that the address is no longer valid.

28  
29  
30  
31 **~~(g)~~(h) Reliability and integrity of documents served by electronic notification**

32  
33 A party or other person that serves a document by means of electronic notification  
34 must:

- 35  
36 (1) Ensure that the documents served can be viewed and downloaded using the  
37 hyperlink provided;  
38  
39 (2) Preserve the document served without any change, alteration, or modification  
40 from the time the document is posted until the time the hyperlink is  
41 terminated; and  
42  
43 (3) Maintain the hyperlink until either:

- 1  
2 (A) All parties in the case have settled or the case has ended and the time  
3 for appeals has expired; or  
4  
5 (B) If the party or other person is no longer in the case, the party or other  
6 person has provided notice to all other parties and other persons  
7 required to receive notice that it is no longer in the case and that they  
8 have 60 days to download any documents, and 60 days have passed  
9 after the notice was given.

10  
11 **(h)(i) When service is complete**

- 12  
13 (1) Electronic service of a document is complete ~~at the time of the electronic~~  
14 ~~transmission of the document or at the time that the electronic notification of~~  
15 ~~service of the document is sent.~~ as provided for under Code of Civil  
16 Procedure section 1010.6 and the rules in this chapter.  
17  
18 (2) If an electronic filing service provider is used for service, the service is  
19 complete at the time that the electronic filing service provider electronically  
20 transmits the document or sends electronic notification of service.  
21  
22 ~~(2) — If a document is served electronically, any period of notice, or any right or~~  
23 ~~duty to act or respond within a specified period or on a date certain after~~  
24 ~~service of the document, is extended by two court days, unless otherwise~~  
25 ~~provided by a statute or a rule.~~  
26  
27 ~~(3) — The extension under (2) does not extend the time for filing:~~  
28  
29 ~~(A) — A notice of intent to move for a new trial;~~  
30  
31 ~~(B) — A notice of intent to move to vacate the judgment under Code of Civil~~  
32 ~~Procedure section 663a; or~~  
33  
34 ~~(C) — A notice of appeal.~~  
35  
36 ~~(4) — Service that occurs after the close of business is deemed to have occurred on~~  
37 ~~the next court day.~~

38  
39 **(i)(i) Proof of service**

- 40  
41 (1) Proof of electronic service ~~may be by any of the methods~~ shall be made as  
42 provided in Code of Civil Procedure section 1013b, 1013a, with the  
43 following exceptions:

1  
2 (A) ~~The proof of electronic service does not need to state that the person~~  
3 ~~making the service is not a party to the case.~~

4  
5 (B) ~~The proof of electronic service must state:~~

6  
7 (i) ~~The electronic service address of the person making the service, in~~  
8 ~~addition to that person's residence or business address;~~

9  
10 (ii) ~~The date of the electronic service, instead of the date and place of~~  
11 ~~deposit in the mail;~~

12  
13 (iii) ~~The name and electronic service address of the person served, in~~  
14 ~~place of that person's name and address as shown on the~~  
15 ~~envelope; and~~

16  
17 (iv) ~~That the document was served electronically, in place of the~~  
18 ~~statement that the envelope was sealed and deposited in the mail~~  
19 ~~with postage fully prepaid.~~

20  
21 (2) ~~Proof of electronic service may be in electronic form and may be filed~~  
22 ~~electronically with the court.~~

23  
24 ~~(3)~~(2) Under rule 3.1300(c), proof of electronic service of the moving papers must  
25 be filed at least five court days before the hearing.

26  
27 ~~(4)~~(3) The party filing the proof of electronic service must maintain the printed  
28 form of the document bearing the declarant's original signature and must  
29 make the document available for inspection and copying on the request of the  
30 court or any party to the action or proceeding in which it is filed, in the  
31 manner provided in rule 2.257(a). If a person signs a printed form of a proof  
32 of electronic service, the party or other person filing the proof of electronic  
33 service must comply with the provisions of rule 257(a).

34  
35 ~~(j)~~(k) **Electronic service by or on court**

36  
37 (1) The court may electronically serve documents any notice, order, judgment, or  
38 other document issued by the court in the same manner that parties may serve  
39 documents by electronic service. as provided for under Code of Civil  
40 Procedure section 1010.6 and the rules in this chapter.  
41

- 1 (2) A document may be electronically served on a court if the court consents to  
2 electronic service or electronic service is otherwise provided for by law or  
3 court order. A court indicates that it agrees to accept electronic service by:  
4
- 5 (A) Serving a notice on all parties and other persons in the case that the  
6 court accepts electronic service. The notice must include the electronic  
7 service address at which the court agrees to accept service; or  
8
- 9 (B) Adopting a local rule stating that the court accepts electronic service.  
10 The rule must indicate where to obtain the electronic service address at  
11 which the court agrees to accept service.  
12

13 **Advisory Committee Comment**  
14

15 **Subdivisions (c)–(d).** Court-ordered electronic service is not subject to the provisions in Code of  
16 Civil Procedure section 1010.6 requiring that, where mandatory electronic filing and service are  
17 established by local rule, the court and the parties must have access to more than one electronic  
18 filing service provider.  
19

20 **Rule 2.252. General rules on electronic filing of documents**  
21

22 **(a) In general**  
23

24 A court may provide for electronic filing of documents in actions and proceedings  
25 as provided under Code of Civil Procedure section 1010.6 and the rules in this  
26 chapter.  
27

28 **(b) Direct and indirect electronic filing**  
29

30 Except as otherwise provided by law, a court may provide for the electronic filing  
31 of documents directly with the court, indirectly through one or more approved  
32 electronic filing service providers, or through a combination of direct and indirect  
33 means.  
34

35 **(c) ~~Effect of document filed electronically~~ No effect on filing deadline**  
36

37 ~~(1) A document that the court or a party files electronically under the rules in this~~  
38 ~~chapter has the same legal effect as a document in paper form.~~

39  
40 ~~(2) Filing a document electronically does not alter any filing deadline.~~  
41

1 **(d) Filing in paper form**

2  
3 When it is not feasible for a party or other person to convert a document to  
4 electronic form by scanning, imaging, or another means, a court may allow that  
5 party or other person to file the document in paper form.  
6

7 **(e) Original documents**

8  
9 In a proceeding that requires the filing of an original document, an electronic filer  
10 may file an electronic copy of a document if the original document is then filed  
11 with the court within 10 calendar days.  
12

13 **(f) Application for waiver of court fees and costs**

14  
15 The court ~~may~~ must permit electronic filing of an application for waiver of court  
16 fees and costs in any proceeding in which the court accepts electronic filings.  
17

18 **(g) Orders and judgments**

19  
20 The court may electronically file any notice, order, minute order, judgment, or  
21 other document prepared by the court.  
22

23 **(h) Proposed orders**

24  
25 Proposed orders may be filed and submitted electronically as provided in rule  
26 3.1312.  
27

28 **Rule 2.253. Permissive electronic filing, mandatory electronic filing, and electronic**  
29 **filing by court order**

30  
31 **(a) Permissive electronic filing by local rule**

32  
33 A court may permit parties by local rule to file documents electronically in any  
34 types of cases, ~~directly or through approved electronic service providers~~, subject to  
35 the conditions in Code of Civil Procedure section 1010.6 and the rules in this  
36 chapter.  
37

38 **(b) Mandatory electronic filing by local rule**

39  
40 A court may require parties by local rule to electronically file documents in civil  
41 actions directly with the court, or directly with the court and through one or more  
42 approved electronic filing service providers, or through more than one approved

1 electronic filing service provider, subject to the conditions in Code of Civil  
2 Procedure section 1010.6, the rules in this chapter, and the following conditions:

- 3
- 4 (1) The court must specify the types or categories of civil actions in which  
5 parties or other persons are required to file and serve documents  
6 electronically. The court may designate any of the following as eligible for  
7 mandatory electronic filing and service:  
8
- 9 (A) All civil cases;
- 10
- 11 (B) All civil cases of a specific category, such as unlimited or limited civil  
12 cases;
- 13
- 14 (C) All civil cases of a specific case type, including but not limited to,  
15 contract, collections, personal injury, or employment;
- 16
- 17 (D) All civil cases assigned to a judge for all purposes;
- 18
- 19 (E) All civil cases assigned to a specific department, courtroom or  
20 courthouse;
- 21
- 22 (F) Any class actions, consolidated actions, or group of actions,  
23 coordinated actions, or actions that are complex under rule 3.403; or  
24
- 25 (G) Any combination of the cases described in subparagraphs (A) to (F),  
26 inclusive.
- 27
- 28 (2) Self-represented parties or other self-represented persons are exempt from  
29 any mandatory electronic filing and service requirements adopted by courts  
30 under this rule and Code of Civil Procedure section 1010.6.
- 31
- 32 (3) In civil cases involving both represented and self-represented parties or other  
33 persons, represented parties or other persons may be required to file and serve  
34 documents electronically; however, in these cases, each self-represented  
35 party or other person is to file, serve, and be served with documents by non-  
36 electronic means unless the self-represented party or other person  
37 affirmatively agrees otherwise.
- 38
- 39 (4) A party or other person that is required to file and serve documents  
40 electronically must be excused from the requirements if the party or other  
41 person shows undue hardship or significant prejudice. A court requiring the  
42 electronic filing and service of documents must have a process for parties or  
43 other persons, including represented parties or other represented persons, to

1 apply for relief and a procedure for parties or other persons excused from  
2 filing documents electronically to file them by conventional means.

3  
4 (5) Any fees charged by the court or an electronic filing service provider shall be  
5 consistent with the fee provisions of Code of Civil Procedure section 1010.6.  
6 ~~for no more than the cost actually incurred by the court in providing for the~~  
7 ~~electronic filing and service of the documents. Any fees charged by an~~  
8 ~~electronic filing service provider shall be reasonable.~~

9  
10 ~~(6) Any fees for electronic filing charged by the court or by an electronic filing~~  
11 ~~service provider must be waived when deemed appropriate by the court,~~  
12 ~~including providing a waiver of the fees for any party that has received a fee~~  
13 ~~waiver.~~

14  
15 ~~(7)(6) Any document required to be electronically filed with the court under this~~  
16 ~~subdivision that is received electronically after the close of business on any~~  
17 ~~day is deemed to have been filed on the next court day, unless by local rule~~  
18 ~~the court provides that any document required to be electronically filed with~~  
19 ~~the court under this subdivision that is received electronically before~~  
20 ~~midnight on a court day is deemed to have been filed on that court day, and~~  
21 ~~any document received electronically after midnight is deemed filed on the~~  
22 ~~next court day. The effective date of filing any document received~~  
23 ~~electronically is prescribed by Code of Civil Procedure section 1010.6. This~~  
24 ~~paragraph provision~~ concerns only the effective date of filing. Any document  
25 that is received electronically must be processed and satisfy all other legal  
26 filing requirements to be filed as an official court record.

27  
28 ~~(8)(7)~~ A court that adopts a mandatory electronic filing program under this  
29 subdivision must report semiannually to the Judicial Council on the operation  
30 and effectiveness of the court's program.

31  
32 **(c) Electronic filing and service required by court order**

33  
34 (1) If a court has adopted local rules for permissive electronic filing, then ~~The~~ the  
35 court may, on the motion of any party or on its own motion, provided that the  
36 order would not cause undue hardship or significant prejudice to any party,  
37 order all parties in any class action, a consolidated action, a group of actions,  
38 a coordinated action, or an action that is complex under rule 3.403 to:

39  
40 (A) ~~Serve all documents electronically, except when personal service is~~  
41 ~~required by statute or rule;~~

42  
43 (B) ~~File~~ file all documents electronically; ~~or~~

1  
2 (C) ~~Serve and file all documents electronically, except when personal~~  
3 ~~service is required by statute or rule.~~  
4

5 (2) A court may combine an order for mandatory electronic filing with an order for  
6 mandatory electronic service as provided in rule 2.252(d).  
7

8 (3)(2) If the court proposes to make any order under (1) on its own motion, the  
9 court must mail notice to ~~the~~ any parties that have not consented to receive  
10 electronic service. The court may electronically serve the notice on any party  
11 that has consented to receive electronic service. Any party may serve and file  
12 an opposition within 10 days after notice is mailed, electronically served, or  
13 such later time as the court may specify.  
14

15 (4)(3) If the court has previously ordered parties in a case to electronically ~~serve or~~  
16 file documents and a new party is added that the court determines should also  
17 be ordered to do so under (1), the court may follow the notice procedures  
18 under (2) or may order the party to electronically ~~serve or~~ file documents and  
19 in its order state that the new party may object within 10 days after service of  
20 the order or by such later time as the court may specify.  
21

22 (5)(4) The court's order may also provide that:  
23

- 24 (A) Documents previously filed in paper form may be resubmitted in  
25 electronic form; and  
26  
27 (B) When the court sends confirmation of filing to all parties, receipt of the  
28 confirmation constitutes service of the filing if the filed document is  
29 available electronically.  
30

### 31 **Advisory Committee Comment** 32

33 **Subdivision (b)(1).** This subdivision allows courts to institute mandatory electronic filing and  
34 service in any type of civil case for which the court determines that mandatory electronic filing is  
35 appropriate. The scope of this authorization is meant to be broad. It will enable courts to  
36 implement mandatory electronic filing in a flexible yet expansive manner. However, in initiating  
37 mandatory electronic filing, courts should take into account the fact that some civil case types  
38 may be easier and more cost-effective to implement at the outset while other types may require  
39 special procedures or other considerations (such as the need to preserve the confidentiality of  
40 filed records) that may make them less appropriate for inclusion in initial mandatory e-filing  
41 efforts.  
42

1 **Subdivision (b)(2).** Although this rule exempts self-represented parties from any mandatory  
2 electronic filing and service requirements, these parties are encouraged to participate voluntarily  
3 in electronic filing and service. To the extent feasible, courts and other entities should assist self-  
4 represented parties to electronically file and serve documents.

5  
6 **Subdivision (c).** Court-ordered electronic filing ~~and service~~ under this subdivision ~~are~~ is not  
7 subject to the provisions in (b) and Code of Civil Procedure section 1010.6 requiring that, where  
8 mandatory electronic filing and service are established by local rule, the court and the parties  
9 must have access to more than one electronic filing service provider.

## 10 11 **Rule 2.254. Responsibilities of court**

### 12 13 **(a) Publication of electronic filing requirements**

14  
15 Each court that permits or mandates electronic filing must publish, in both  
16 electronic and print formats, the court’s electronic filing requirements.

### 17 18 **(b) Problems with electronic filing**

19  
20 If the court is aware of a problem that impedes or precludes electronic filing ~~during~~  
21 ~~the court’s regular filing hours~~, it must promptly take reasonable steps to provide  
22 notice of the problem.

### 23 24 **(c) Public access to electronically filed documents**

25  
26 Except as provided in rules 2.250–2.259 and 2.500–2.506, an electronically filed  
27 document is a public document at the time it is filed unless it is sealed under rule  
28 2.551(b) or made confidential by law.

## 29 30 **Rule 2.255. Contracts with electronic filing service providers**

### 31 32 **(a) Right to contract**

- 33
- 34 (1) A court may contract with one or more electronic filing service providers to  
35 furnish and maintain an electronic filing system for the court.
  - 36
  - 37 (2) If the court contracts with an electronic filing service provider, it may require  
38 electronic filers to transmit the documents to the provider.
  - 39
  - 40 (3) If the court contracts with an electronic service provider or the court has an  
41 in-house system, the provider or system must accept filing from other  
42 electronic filing service providers to the extent the provider or system is  
43 compatible with them.

1  
2 **(b) Provisions of contract**

3  
4 ~~The court's contract with an electronic filing service provider may allow the~~  
5 ~~provider to charge electronic filers a reasonable fee in addition to the court's filing~~  
6 ~~fee. The contract may also allow the electronic filing service provider to make other~~  
7 ~~reasonable requirements for use of the electronic filing system.~~  
8

9 (1) The court's contract with an electronic filing service provider may:

10  
11 (a) Allow the provider to charge electronic filers a reasonable fee in addition to  
12 the court's filing fee;

13  
14 (b) Allow the provider to make other reasonable requirements for use of the  
15 electronic filing system.

16  
17 (2) The court's contract with an electronic filing service provider must comply with  
18 requirements of Code of Civil Procedure section 1010.6.

19  
20 **(c) Transmission of filing to court**

21  
22 An electronic filing service provider must promptly transmit any electronic filing  
23 and any applicable filing fee to the court.  
24

25 **(d) Confirmation of receipt and filing of document**

26  
27 (1) An electronic filing service provider must promptly send to an electronic filer  
28 its confirmation of the receipt of any document that the filer has transmitted  
29 to the provider for filing with the court.  
30

31 (2) The electronic filing service provider must send its confirmation to the filer's  
32 electronic service address and must indicate the date and time of receipt, in  
33 accordance with rule 2.259(a).  
34

35 (3) After reviewing the documents, the court must promptly transmit to the  
36 electronic filing service provider and the electronic filer the court's  
37 confirmation of filing or notice of rejection of filing, in accordance with rule  
38 2.259.  
39

1 **(e) Ownership of information**

2  
3 All contracts between the court and electronic filing service providers must  
4 acknowledge that the court is the owner of the contents of the filing system and has  
5 the exclusive right to control the system's use.

6  
7 **Rule 2.256. Responsibilities of electronic filer**

8  
9 **(a) Conditions of filing**

10 Each electronic filer must:

- 11  
12  
13 (1) Comply with any court requirements designed to ensure the integrity of  
14 electronic filing and to protect sensitive personal information;  
15  
16 (2) Furnish information the court requires for case processing;  
17  
18 (3) Take all reasonable steps to ensure that the filing does not contain computer  
19 code, including viruses, that might be harmful to the court's electronic filing  
20 system and to other users of that system;  
21  
22 (4) Furnish one or more electronic service addresses; in the manner specified by  
23 the court, ~~at which the electronic filer agrees to accept service.~~ This only  
24 applies when the electronic filer has consented to or is required to accept  
25 electronic service;  
26  
27 (5) Immediately provide the court and all parties with any change to the  
28 electronic filer's electronic service address. This only applies when the  
29 electronic filer has consented to or is required to accept electronic service;  
30 and  
31  
32 (6) If the electronic filer uses an electronic filing service provider, provide the  
33 electronic filing service provider with the electronic address at which the filer  
34 is to be sent all documents and immediately notify the electronic filing  
35 service provider of any change in that address.

36  
37 **(b) Format of documents to be filed electronically**

38  
39 A document that is filed electronically with the court must be in a format specified  
40 by the court unless it cannot be created in that format. The format adopted by a  
41 court must meet the following requirements:  
42

- 1 (1) The software for creating and reading documents must be in the public  
2 domain or generally available at a reasonable cost.  
3  
4 (2) The printing of documents must not result in the loss of document text,  
5 format, or appearance.  
6  
7 (3) The document must be text searchable when technologically feasible without  
8 impairment of the document’s image.  
9

10 If a document is filed electronically under the rules in this chapter and cannot be  
11 formatted to be consistent with a formatting rule elsewhere in the California Rules  
12 of Court, the rules in this chapter prevail.  
13

14 **Advisory Committee Comment**  
15

16 **Subdivision (b)(3).** The term “technologically feasible” does not require more than the  
17 application of standard, commercially available optical character recognition (OCR) software.  
18

19 **Rule 2.257. Requirements for signatures on documents**  
20

21 **(a) Documents signed under penalty of perjury**  
22

23 When a document to be filed electronically provides for a signature under penalty  
24 of perjury; of any person, the following applies—the document is deemed to have  
25 been signed by that person if filed electronically provided that either of the  
26 following conditions is satisfied:  
27

- 28 (1) The declarant has signed the document using a computer or other technology  
29 in accordance with procedures, standards, and guidelines established by the  
30 Judicial Council; or  
31

32 ~~(1)(2)~~ The declarant ~~The document is deemed signed by the declarant if, before~~  
33 ~~filing, the declarant has physically signed a printed form of the document. (2)~~  
34 ~~By electronically filing the document, the electronic filer certifies that (1) has~~  
35 ~~been complied with and that the original, signed document is available for~~  
36 ~~inspection and copying at the request of the court or any other party. Local~~  
37 ~~child support agencies may maintain original, signed pleadings by way of an~~  
38 ~~electronic copy in the statewide automated child support system and must~~  
39 ~~maintain them only for the period of time stated in Government Code section~~  
40 ~~68152(a). If the local child support agency maintains an electronic copy of~~  
41 ~~the original, signed pleading in the statewide automated child support system,~~  
42 ~~it may destroy the paper original. In the event this second method of~~

1 submitting documents electronically under penalty of perjury is used, the  
2 following conditions apply:

3  
4 (A)(3) At any time after the electronic version of the document is filed,  
5 any ~~other~~ party may serve a demand for production of the  
6 original signed document. The demand must be served on all  
7 other parties but need not be filed with the court.  
8

9 (B)(4) Within five days of service of the demand under ~~(3)~~(A), the party  
10 or other person on whom the demand is made must make the  
11 original signed document available for inspection and copying by  
12 all other parties.  
13

14 (C)(5) At any time after the electronic version of the document is filed,  
15 the court may order the filing party or other person to produce the  
16 original signed document in court for inspection and copying by  
17 the court. The order must specify the date, time, and place for the  
18 production and must be served on all parties.  
19

20 (D) Notwithstanding (A)–(C), local child support agencies may  
21 maintain original, signed pleadings by way of an electronic copy  
22 in the statewide automated child support system and must  
23 maintain them only for the period of time stated in Government  
24 Code section 68152(a). If the local child support agency  
25 maintains an electronic copy of the original, signed pleading in  
26 the statewide automated child support system, it may destroy the  
27 paper original.  
28

29 **(b) Documents not signed under penalty of perjury**

30  
31 If a document does not require a signature under penalty of perjury, the document  
32 is deemed signed by the party if the document is filed electronically.  
33

34 **(c) Documents requiring signatures of opposing parties**

35  
36 When a document to be filed electronically, such as a stipulation, requires the  
37 signatures of opposing parties, the following procedure applies:  
38

- 39 (1) The party filing the document must obtain the signatures of all parties on a  
40 printed form of the document.  
41  
42 (2) The party filing the document must maintain the original, signed document  
43 and must make it available for inspection and copying as provided in (a)(2) of

1            this rule and Code of Civil Procedure section 1010.6. The court and any other  
2            party may demand production of the original signed document in the manner  
3            provided in (a)(3)–(5)(2)(A)–(C).

- 4  
5            (3) By electronically filing the document, the electronic filer indicates that all  
6            parties have signed the document and that the filer has the signed original in  
7            his or her possession.

8  
9            **(d) Digital signature**

10  
11            A party is not required to use a digital signature on an electronically filed  
12            document.

13  
14            **(e) Judicial signatures**

15  
16            If a document requires a signature by a court or a judicial officer, the document  
17            may be electronically signed in any manner permitted by law.

18  
19            **Advisory Committee Comment**

20  
21            **Subdivision (a)(1).** The standards and guidelines for electronic signatures that satisfy the  
22            requirements for an electronic signature under penalty of perjury are [will be] contained in the  
23            Trial Court Records Manual.

24  
25            **Rule 2.259. Actions by court on receipt of electronic filing**

26  
27            **(a) Confirmation of receipt and filing of document**

28  
29            (1) *Confirmation of receipt*

30  
31            When a court receives an electronically submitted document, the court must  
32            promptly send the electronic filer confirmation of the court’s receipt of the  
33            document, indicating the date and time of receipt. A document is considered  
34            received at the date and time the confirmation of receipt is created.

35  
36            (2) *Confirmation of filing*

37  
38            If the document received by the court under (1) complies with filing  
39            requirements and all required filing fees have been paid, the court must  
40            promptly send the electronic filer confirmation that the document has been  
41            filed. The filing confirmation must indicate the date and time of filing and is  
42            proof that the document was filed on the date and at the time specified. The  
43            filing confirmation must also specify:  
44

- 1 (A) Any transaction number associated with the filing;  
2  
3 (B) The titles of the documents as filed by the court; and  
4  
5 (C) The fees assessed for the filing.  
6

7 (3) *Transmission of confirmations*  
8

9 The court must send receipt and filing confirmation to the electronic filer at  
10 the electronic service address the filer furnished to the court under rule  
11 2.256(a)(4). The court must maintain a record of all receipt and filing  
12 confirmations.  
13

14 (4) *Filer responsible for verification*  
15

16 In the absence of the court's confirmation of receipt and filing, there is no  
17 presumption that the court received and filed the document. The electronic  
18 filer is responsible for verifying that the court received and filed any  
19 document that the electronic filer submitted to the court electronically.  
20

21 **(b) Notice of rejection of document for filing**  
22

23 If the clerk does not file a document because it does not comply with applicable  
24 filing requirements or because the required filing fee has not been paid, the court  
25 must promptly send notice of the rejection of the document for filing to the  
26 electronic filer. The notice must state the reasons that the document was rejected  
27 for filing.  
28

29 ~~**(c) Document received after close of business**~~  
30

31 ~~A document that is received electronically by the court after the close of business is~~  
32 ~~deemed to have been received on the next court day, unless the court has provided~~  
33 ~~by local rule, with respect to documents filed under the mandatory electronic filing~~  
34 ~~provisions in rule 2.253(b)(7), that documents received electronically before~~  
35 ~~midnight on a court day are deemed to have been filed on that court day, and~~  
36 ~~documents received electronically after midnight are deemed filed on the next court~~  
37 ~~day. This provision concerns only the effective date of filing; any document that is~~  
38 ~~electronically filed must be processed and satisfy all other legal filing requirements~~  
39 ~~to be filed as an official court record.~~  
40

1 **~~(c)~~(d) Delayed delivery**

2  
3 If a technical problem with a court’s electronic filing system prevents the court  
4 from accepting an electronic filing ~~during its regular filing hours~~ on a particular  
5 court day, and the electronic filer demonstrates that he or she attempted to  
6 electronically file the document on that day, the court must deem the document as  
7 filed on that day. This subdivision does not apply to the filing of a complaint or any  
8 other initial pleading in an action or proceeding.  
9

10 **~~(d)~~(e) Endorsement**

- 11  
12 (1) The court’s endorsement of a document electronically filed must contain the  
13 following: “Electronically filed by Superior Court of California, County of  
14 \_\_\_\_\_, on \_\_\_\_\_ (date),” followed by the name of the court clerk.  
15  
16 (2) The endorsement required under (1) has the same force and effect as a  
17 manually affixed endorsement stamp with the signature and initials of the  
18 court clerk.  
19  
20 (3) A complaint or another initial pleading in an action or proceeding that is filed  
21 and endorsed electronically may be printed and served on the defendant or  
22 respondent in the same manner as if it had been filed in paper form.  
23

24 **~~(e)~~(f) Issuance of electronic summons**

- 25  
26 (1) On the electronic filing of a complaint, a petition, or another document that  
27 must be served with a summons, the court may transmit a summons  
28 electronically to the electronic filer in accordance with this subdivision and  
29 Code of Civil Procedure section 1010.6.  
30  
31 (2) The electronically transmitted summons must contain an image of the court’s  
32 seal and the assigned case number.  
33  
34 (3) Personal service of the printed form of a summons transmitted electronically  
35 to the electronic filer has the same legal effect as personal service of a copy  
36 of an original summons.

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Juvenile Law: Title IV-E Findings and Orders

*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: December 15, 2016

Project description from annual agenda: Implements federal legislation that modified title IVE findings that must be made at status review hearings for children in out of home placement.

*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

**SPR17-\_\_**

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Title

Juvenile Law: Title IV-E Findings and Orders

Action Requested

Review and submit comments by April 28, 2017

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rules 5.710, 5.715, and 5.810; revise forms JV-320, JV-415, JV-421, JV-430, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-462, JV-672, JV-674, and JV-678

Proposed Effective Date

January 1, 2018

Contact

Nicole Giacinti, (415) 865-7598  
[nicole.giacinti@jud.ca.gov](mailto:nicole.giacinti@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 proposes amending three rules of court and revising 18 juvenile law forms designed to assist the courts in documenting required findings and orders in out-of-home placement cases. The proposed changes are designed to bring these rules and forms into compliance with recent legislation.

### Background

The forms to be revised were originally created to help ensure courts were accurately documenting the findings and orders required by Title IV-E and the Welfare and Institutions Code for children in out of home placement. The 15 dependency forms were last revised in 2011, while the 3 delinquency forms were last revised in 2012. While over the last 5 years there have been changes to the findings and orders related to out of home placement cases, the recent implementation of Senate Bill 794 (Comm. On Human Services; Stats. 2015, ch. 425) requires that these forms be revised. SB 794 had a significant impact on the findings and orders required in juvenile dependency and delinquency cases. Specifically, the legislation did away with planned permanent living arrangements for children under 16 years of age and imposed additional findings and order requirements on the court for all children in out of home placement.

*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 additional findings and orders requirements are aimed at ensuring that permanency is achieved more quickly for children in out of home care and require the court to make findings regarding the barriers to achieving permanence for the child, among other things.

### **Current Forms**

The Judicial Council adopted a number of forms to assist courts in documenting findings and orders in cases where the child is placed outside of the home, including the following:

*Orders under Welfare and Institutions Code Sections 366.24, 366.26, 727.3, 727.31* (form JV-320)

*Findings and Orders After Dispositional Hearing* (form JV-415)

*Dispositional Attachment: Removal From Custodial Parent-Placement with Nonparent* (form JV-421)

*Findings and Orders After Six-Month Prepermanency Hearing* (form JV-430)

*Six-Month Prepermanency Attachment: Reunification Services Terminated* (form JV-433)

*Findings and Orders After 12-Month Permanency Hearing* (form JV-435)

*Twelve-Month Permanency Attachment: Reunification Services Terminated* (form JV-438)

*Findings and Orders After 18-Month Permanency Hearing* (form JV-440)

*Eighteen-Month Permanency Attachment: Reunification Services Terminated* (form JV-442)

*Eighteen-Month Permanency Attachment: Reunification Services Continued* (form JV-443)

*Findings and Orders After Postpermanency Hearing-Parental Rights Terminated; Permanent Plan of Adoption* (form JV-445)

*Findings and Orders After Postpermanency Hearing-Permanent Plan Other Than Adoption* (form JV-446)

*Findings and Orders After 24-Month Permanency Hearing* (form JV-455)

*Twenty-four-Month Permanency Attachment: Reunification Services Terminated* (form JV-457)

*Findings and Orders After Nonminor Dependent Status Review Hearing* (form JV-462)

*Findings and Orders After Six-Month Prepermanency Hearing-Delinquency* (form JV-672)

*Findings and Orders After Permanency Hearing-Delinquency* (form JV-674)

*Findings and Orders After Postpermanency Hearing* (form JV-678)

In practice, these forms are put to a variety of uses by the courts. Some courts use the forms to document all findings and orders. Other courts have programmed the findings and orders from the forms into their case management systems, and some use them as a template to create their own local findings and order documents.

### **SB 794**

In 2015, the Legislature passed Senate Bill 794 (Comm. on Human Services; Stats. 2015, ch. 425), which implemented large-scale change to the findings and orders required in out-of-home placement cases for dependent and delinquent youth. Specifically, SB 794 revised Family Code section 7950 and Welfare and Institutions Code sections 362.04, 362.05, 366, 366.21, 366.22, 366.25, 366.26, 366.3, 366.31, 706.5, 706.6, 727.2, 727.3, 10618.6, 11386, 11400, 16002, 16501, and 16501.1, to, among other things:

- Narrow the use of planned permanent living arrangements as a catchall option for children in out-of-home placement. Prior to SB 794, the court could designate placement in a foster home or group home (referred to as “another planned permanent living arrangement”) as a long-term plan for children of any age. That is no longer true. Since the adoption of SB 794, the availability of another planned permanent living arrangement as a long-term plan is reserved for children age 16 and older; and
- Require the court to make a variety of additional findings and orders aimed at achieving permanence more quickly for children.

The forms listed above need to be updated to reflect these statutory changes.

### **SB 1060**

The law currently allows, in an adoption proceeding, for continuing contact between the birth relatives and a child if a postadoption contact agreement is entered into voluntarily and is in the best interests of the child at the time the adoption petition is granted. Prior to 2016, when parental rights were terminated and the dependent or delinquent child was ordered placed for adoption, the county adoption agency or the state Department of Social Services was required to take steps to facilitate ongoing sibling contact, including encouraging of prospective adoptive parents to make a plan for facilitating post adoptive contact. In 2015, the Legislature passed Senate Bill 1060 (Leno; Stats. 2015, ch. 719) which requires the county placing agency to facilitate a meeting with the child, the siblings of the child, the prospective adoptive parents, and a facilitator to decide whether to voluntarily execute a postadoption sibling contact agreement. SB 1060 directs the court to inquire into the status of the development of a voluntary postadoption sibling contact agreement at the first review hearing conducted after parental rights have been terminated and adoption has been ordered. Two forms relating to postpermanency planning, forms JV-445 and JV-446, need to be updated to reflect these new requirements.

### **Additional Changes**

During the five years since most of the forms listed above were last revised, other bills and California case law have made minor modifications to the requirements for findings and orders in out-of-home placement cases. The forms need to be updated to reflect these changes in the law as well.

### **The Proposal**

To ensure conformance with the SB 794, SB 1060, and other recent statutory changes and changes in case law, the Family and Juvenile Law Advisory Committee proposes the following forms and rule revisions. These changes will ensure that the forms contain accurate, current information courts can rely on when making findings and orders related to out-of-home placement cases.

## **Revisions to Implement SB 794**

***Permanent plan options.*** Amendments to Welfare and Institutions Code sections 366(a)(2), 366.21(g)(5)(A), 366.22(a)(3), 366.25(a)(3), 366.26, 366.3(h), 727.2, and 727.3 change the permanent plan options available to children in out-of-home placement and require the court to make additional findings regarding the agency's efforts to achieve permanency for the child. To implement these new requirements, the committee proposes the following form and rule changes:

- Revise forms JV-320 (item 16a), JV-433 (item 13), JV-438 (item 10), JV-442 (item 9), JV-446 (item 28), JV-457 (item 8), JV-462 (item 28), JV-674 (item 15), and JV-678 (item 14) to include the newly implemented permanent plan options.
- Revise forms JV-433 (item 14), JV-438 (item 11), JV-442 (item 10), JV-446 (item 29), JV-457 (item 9), JV-674 (item 17), and JV-678 (item 17) to include the new findings related to children 16 and older.
- Revise form JV-462 (item 27) to include the new findings related to nonminors placed in another planned permanent living arrangement.
- Revise form JV-672 (item 14) to reflect new plan options.
- Amend the reference to Welfare and Institutions Code section 366.21(e) in rule 5.710. Pursuant to SB 794, the legislature added to and renumbered Welfare and Institutions Code section 366.21; consequently, the statutory reference in rule 5.710 must be amended to refer to the correct code sections, which are sections 366.22(e) and (g).
- Amend the reference to Welfare and Institutions Code section 366.21(f) in rule 5.715. Pursuant to SB 794, the legislature added to and renumbered Welfare and Institutions Code section 366.21; consequently, the statutory reference in rule 5.715 must be amended to refer to the correct code sections, which are sections 366.22(f) and (g).

***Relative search.*** Amendments to Family Code section 7950 mandate that the court make a finding regarding the department's efforts to locate relatives at the permanency hearing where reunification services are terminated, and at every hearing thereafter. To implement these new requirements, the committee proposes revising forms JV-433 (item 9), JV-445 (item 14a), JV-462 (item 21), JV-674 (item 14b(4)), and JV-678 (item 10) to include the relative search finding.

***Ongoing and intensive efforts.*** Amendments to Welfare and Institutions Code sections 366(a)(1)(B) and 727.2 require the court to determine whether the child welfare agency has made ongoing and intensive efforts to achieve permanency for children 16 or older. To implement these new requirements, the committee proposes revising forms JV-440 (item 11), JV-445 (item 13), JV-446 (item 17), JV-455 (item 11), JV-462 (item 18), JV-674 (item 10a), and JV-678 (item 11a) to include an ongoing and intensive efforts finding.

***Minor and nonminor dependent parents.*** Amendments to Welfare and Institutions Code section 366.22(b) require the court to consider barriers faced by minor or nonminor dependent parents when deciding whether to continue reunification services to 24 months. To implement these new

requirements, the committee proposes revising form JV-443 (item 6a(3)) to require the court to consider minor and nonminor dependent parents.

**“Successful adulthood.”** Amendments to title 42 United States Code section 675 and to Welfare and Institutions Code section 366.3(e)(10) require that children age 14 and older in out-of-home placement receive services to help them achieve successful adulthood (previously referred to as “independence”). To implement these new requirements, the committee proposes:

- Revising forms JV-320 (item 20), JV-421 (item 32), JV-430 (item 20), JV-435 (item 20), JV-440 (item 21), JV-445 (item 20), JV-446 (item 26), and JV-455 (item 21) to update this finding.
- Revising forms JV-462 (items 15, 16, 24, 28 & 33), JV-672 (item 15), JV-674 (item 18), and JV-678 (item 18) to change all references to “independence” to “successful adulthood.”

#### ***Postpermanency hearings.***

SB 794 amended Welfare and Institutions Code section 727.3(a)(5), the statute that discusses permanency hearings for delinquent children, to include the additional findings and orders, but did not amend Welfare and Institutions Code section 727.2(g), the statute that addresses postpermanency hearings. Since the new findings and orders required by SB 794 are aimed at achieving permanence more quickly for children, it seems incongruous not to require the new findings and orders at both permanency and postpermanency hearings. Consequently, the committee proposes revising form JV-678 to include the additional findings and orders, and amending rule 5.810(c)(2)(A), to clarify that the new findings and orders set forth in Welfare and Institutions Code section 727.3(a)(5) should also be made at postpermanency hearings.

#### **Revisions to implement SB 1060**

As noted above, SB 1060 encourages postadoption contact between siblings and, to that end, requires the court to inquire about the development of voluntary postadoption sibling contact agreements. To comply with SB 1060, the committee proposes revising forms JV-445 (item 24) and JV-446(item 23) to include a check box that indicates whether a postadoption sibling contact agreement has been developed and, if not specifies that the court inquired about the development of a voluntary postadoption contact agreement for the siblings.

#### **Additional Proposed Revisions**

For example, the committee proposes that certain forms be revised to include information about whether the child has an order for psychotropic medication, so that the court and justice partners can closely track children with such orders. The committee also recommends that form JV-443, which is used at 18-month review hearings in dependency cases, contain a check box that

indicates the court is ordering additional services because the human services agency failed to offer reasonable services.

**Time limits.** Welfare and Institutions Code section 727.3 sets forth the time limits on reunification services for parents. Although this code section was not changed by SB 794, the time limits on reunification services for parents of delinquent youth are currently not clearly delineated on the findings and order forms. The committee proposes revising forms JV-674 (item 14) and JV-678 (item 5) to clarify when services are continued or terminated. This will make the findings and orders more straightforward will ensure legally accurate findings.

**Psychotropic medication.** Recent legislation, Senate Bill 238 (Mitchell; Stats. 2015, ch. 534), requires closer court oversight of children who have a court order for psychotropic medication. While not specifically required by statute, the inclusion of a check box that indicates whether or not the child has a psychotropic medication order and documents the date of the next hearing on that order will allow the court and parties to track psychotropic medication orders and comply with the statutory requirements. The committee therefore proposes revising forms JV-421 (item 29), JV-430 (item 17), JV-435 (item 17), JV-440 (item 18), JV-445 (item 17), JV-446 (item 27), JV-672 (item 21), JV-674 (item 24), and JV-678 (item 23) to include a psychotropic medication order finding.

**Continue reunification services past 18 months.** Recently, *In re J.E.* (2016) 3 Cal.App.5<sup>th</sup> 557 reiterated that the court has the discretion to continue reunification services past 18 months when the court finds that reasonable services have not been provided to the parent. Revising form JV-443 to include a finding authorizing continued reunification services at the 18-month hearing will ensure the form is as accurate as possible. The committee therefore proposes revising form JV-443 (item 6c) to include the following language for the finding:

“The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child’s need for a prompt resolution of dependency status, the court finds good cause to continue reunification services to \_\_\_\_.”

- **Revisions to Provide Information on Appellate Rights.** California Rules of Court, rule 5.590(a) requires that a parent must be present at the court hearing to be advised of his or her appellate rights. The committee considered a request to change this rule but determined that the rule is appropriate as drafted. Instead, the committee decided existing forms would be an appropriate vehicle to provide parents with information about the right to seek appellate review and alert them that they will not be advised of their appellate rights if they fail to appear at a future hearing. The committee therefore proposes revising forms JV-415, JV-430, JV-435, JV-440, and JV-455 to include the following language in a section titled “For Your Information”:

“You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights.

Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.”

The committee would like feedback on whether adding this proposed language on the forms is sufficient; or, in the alternative, whether a link to a website maintained by the Judicial Council, with information on the right to seek appellate review, would be an appropriate tool to provide information to parties about their potential right to seek appellate review of the court’s orders.

### **Alternatives Considered**

The committee considered addressing recent legislative changes to the required findings and orders through trainings and technical assistance; however, many courts have asked for revised findings and orders documents that reflect the recent legal changes. In addition, this seems to be an opportune time to revise the findings and orders since many courts are moving to new case management systems. Revising the findings and orders now will facilitate inputting the new findings and orders into the case management system along with all the other information that has to be entered. The committee considered taking up this proposal for the winter cycle but, after discussion, determined that revising such a large number of forms would be better suited to the later spring cycle.

The committee considered not including on the forms a finding noting whether the child has an order for psychotropic medications. After considering the keen interest on the subject from the legislature and the public, and the value that would be added to the forms by providing the courts and parties a mechanism by which to track psychotropic medication orders, the committee proposes including such a finding on the forms.

The committee also considered not proposing revising form JV-443 to include a finding that authorizes more than 18 months of reunification services when reasonable services have not been provided. The enumerated exceptions to the 18-month time limit set forth in Welfare and Institutions Code section 366.22(b)—parent has made progress in substance abuse treatment; parent has recently been released from incarceration, institutionalization, or the custody of the Department of Homeland Security—do not include child welfare’s failure to provide reasonable services. However, recent case law reiterating that the court has the discretion to continue reunification services past the 18-month mark suggests that such a finding is necessary to make the form as accurate as possible. As such, the committee proposes including a finding authorizing more than 18 months of services when the court finds that reasonable services have not been provided.

In addition, the committee considered whether to revise the independent living finding on the juvenile delinquency findings and order forms. The committee acknowledges that the 600 section of the Welfare and Institutions Code was not revised to reflect the changes made by the federal legislation, which now requires that children in out-of-home placement who are 14 and

older—rather than 16 and older—receive independent living planning. The committee believes, however, that the federal legislation’s application to both dependent and delinquent youth is clear. Consequently, the committee proposes revising the independent living finding on the delinquency forms as well as the dependency forms.

The committee considered not proposing amending rule 5.810 to require compliance with the findings and orders required in Welfare and Institutions Code section 727.3(a)(5). However, after discussion the committee decided that the spirit of SB 794 required that the rule be amended to ensure that the appropriateness of the child’s permanent plan remain a point of inquiry at postpermanency hearings.

Finally, the committee considered whether to revise rule 5.903 (nonminor dependent status review hearing), the partner rule to form JV-462. The revisions to the rule would have incorporated references to the social worker or probation officer’s efforts to finalize the permanent plan of a nonminor placed in another planned permanent living arrangement, as well as the continuing appropriateness of another planned permanent living arrangement as a permanent plan. However, efforts to achieve the permanent plan and the appropriateness of the nonminor’s plan are already included in the current version of rule 5.903. Consequently, the committee decided revising the rule is unnecessary, as it would be redundant.

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

This proposal will result in minimal printing costs and may result in a temporary increase in employee labor for those courts that need to reprogram existing case management systems. On the other hand, it will likely result in a statewide savings because courts will not have to devote employee resources to developing legally accurate forms. Instead, these revised forms will be provided to courts statewide.

## 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 it useful to include an additional finding that documents whether the child has a psychological medications order and sets forth the next hearing date on that order on the findings and orders forms?
- Should form JV-443, *Eighteen-Month Permanency Attachment: Reunification Services Continued*, include a finding that reunification services be extended to 24 months when the court finds that reasonable services have not been provided?
- Title 42 United States Code section 675 was amended to require that independent living planning begin for children at age 14 or older who are in out-of-home placement, rather than age 16 or older; however, the Welfare and Institutions Code was amended only to require that dependent youth—but not delinquent youth—receive independent living planning at age 14 or older. Should the findings and orders that relate to delinquent youth also be revised to require independent living planning for children at age 14 or older who are in out-of-home placement?
- Recently, concerns have been raised regarding the clarity of the process for requesting termination of parental rights. Currently, this request is embedded in a number of forms in this proposal. Would it be helpful if requests to terminate parental rights were made on a separate attachment that was filed with the court?
- The legislation driving the revision of these 18 juvenile law forms also impacts nonminor dependents. Specifically, the legislation contemplates speaking with nonminor dependents about their permanent plans, which seems to contradict the stated goal of extended foster care: achieving independence. Should form JV-462 remain untouched, despite the statutory changes that explicitly apply to nonminor dependents?
- Likewise, should rule 5.903 (the rule governing nonminor dependent status review hearings), be revised to include language related to the appropriateness of another planned permanent living arrangement?
- Would providing a link on the forms to a website maintained by the Judicial Council with information on the right to seek appellate review be an appropriate vehicle to inform parties of their potential right to seek appellate review?

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 six 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 amended Cal. Rules of Court, rule 5.710, at pages 10–\_\_\_
2. Proposed amended Cal. Rules of Court, rule 5.715, at pages \_\_\_
3. Proposed amended Cal. Rules of Court, rule 5.810, at pages \_\_\_
4. Proposed revised forms JV-320, JV-415, JV-421, JV-430, JV-433, JV-435, JV-438, JV-440, JV-442, JV-443, JV-445, JV-446, JV-455, JV-457, JV-462, JV-672, JV-674, and JV-678, at pages \_\_\_–\_\_\_

Rules 5.710, 5.715, and 5.810 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 5. Family and Juvenile Rules**

**Rule 5.710. Six-month review hearing**

**(a) Determinations and conduct of hearing (§§ 364, 366, 366.1, 366.21)**

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(e) and (g), and as follows:

(1) – (4) \*\*\*

**(b) \*\*\***

**Rule 5.715. Twelve-month permanency hearing**

**(a) \*\*\***

**(b) Determinations and conduct of hearing (§§ 309(e), 361.5, 366, 366.1, 366.21)**

At the hearing, the court and all parties must comply with all relevant requirements and procedures in rule 5.708, General review hearing requirements. The court must make all appropriate findings and orders specified in rule 5.708 and proceed under section 366.21(f) and (g) as follows:

(1) – (5) \*\*\*

**Rule 5.810. Reviews, hearings, and permanency planning**

**(a) \* \* \***

**(b) Permanency planning hearings**

(1) – (2) \*\*\*

(3) *Selection of a permanent plan (§ 727.3(b))*

At the first permanency planning hearing, the court must select a permanent plan. At subsequent permanency planning hearings that must be held under section 727.2(g) and rule 5.810(c), the court must either make a finding that the current permanent plan is appropriate or select a different permanent

1 plan, including returning the child home, if appropriate. The court must  
2 choose from one of the following permanent plans, listed in section 727.3(b)  
3 which are, in order of priority:  
4

- 5 (A) ~~A permanent plan that immediately returns the child to the physical~~  
6 ~~custody of the parent or guardian. This plan must be the permanent~~  
7 ~~plan unless no reunification services were offered under section~~  
8 ~~727.2(b), or unless the court finds that the probation department has~~  
9 ~~established by a preponderance of evidence that return would create a~~  
10 ~~substantial risk of detriment to the safety, protection, or physical or~~  
11 ~~emotional well being of the ward. The probation department has the~~  
12 ~~burden of establishing that detriment. In making its determination, the~~  
13 ~~court must review and consider all reports submitted to the court and~~  
14 ~~must consider the efforts or progress, or both, demonstrated by the~~  
15 ~~child and family and the extent to which the child availed himself or~~  
16 ~~herself of the services provided.~~
- 17 (B) ~~A permanent plan of return of the child to the physical custody of the~~  
18 ~~parent or guardian, after 6 additional months of reunification services.~~  
19 ~~The court may not order this plan unless the court finds that there is a~~  
20 ~~substantial probability that the child will be able to return home within~~  
21 ~~18 months of the date of initial removal or that reasonable services~~  
22 ~~have not been provided to the parent or guardian.~~
- 23 (C) ~~A permanent plan of adoption. When this plan is identified, the court~~  
24 ~~must order that a hearing under section 727.31 be held within 120~~  
25 ~~days.~~
- 26 (D) ~~A permanent plan of legal guardianship. When this plan is ordered, the~~  
27 ~~court must set a hearing under the procedures described in section 728~~  
28 ~~and rule 5.815.~~
- 29 (E) ~~A permanent plan of placement with a fit and willing relative. When~~  
30 ~~this plan is ordered, the court must specify that the child will be placed~~  
31 ~~with the appropriate relative on a permanent basis.~~
- 32 (F) ~~A permanent plan of placement in a planned permanent living~~  
33 ~~arrangement. The court may order this permanent plan only after~~  
34 ~~considering, and ruling out, each of the other permanent plan options~~  
35 ~~listed above. If, after doing so, the court concludes that a planned~~  
36 ~~permanent living arrangement is the most appropriate permanent plan~~  
37 ~~for the child, it must also enter a finding, by clear and convincing~~  
38 ~~evidence, that there is a compelling reason, as defined in section~~  
39 ~~727.3(c), for determining that a plan of termination of parental rights~~  
40 ~~and adoption is not in the best interest of the child. When a planned~~  
41 ~~permanent living arrangement is ordered, the court must specify the~~  
42 ~~type of placement. The court must also specify the goal of the~~  
43 ~~placement, which may include, but is not limited to, a goal of the child~~

1                    ~~returning home, emancipation, guardianship, or permanent placement~~  
2                    ~~with a relative.~~

3  
4            (4) \*\*\*

5  
6            **(c) Postpermanency status review hearings (§ 727.2)**

7  
8            A postpermanency status review hearing must be conducted for wards in placement  
9            no less frequently than once every six months.

10  
11           (1) *Consideration of reports (§ 727.2(d))*

12  
13           The court must review and consider the social study report and updated case  
14           plan submitted for this hearing by the probation officer and the report  
15           submitted by any CASA volunteer, and any other reports filed with the court  
16           under section 727.2(d).

17  
18           (2) *Findings and orders (§ 727.2(g))*

19  
20           At each postpermanency status review hearing, the court must consider the  
21           safety of the ward and make findings and orders regarding the following:

- 22  
23           (A) Whether the current permanent plan continues to be appropriate. If not,  
24           the court must select a different permanent plan, including returning the  
25           child home, if appropriate. If the plan is another planned permanent  
26           living arrangement, the court must meet the requirements set forth in  
27           Welfare and Institutions Code section 727.3(a)(5);  
28  
29           (B) The continuing necessity for and appropriateness of the placement;  
30  
31           (C) The extent of the probation department’s compliance with the case plan  
32           in making reasonable efforts to complete whatever steps are necessary  
33           to finalize the permanent plan for the child;  
34  
35           (D) Whether the child was actively involved, as age- and developmentally  
36           appropriate, in the development of his or her own case plan and plan  
37           for permanent placement. If the court finds that the child ~~or youth~~ was  
38           not appropriately involved, the court must order the probation  
39           department to actively involve the child in the development of his or  
40           her own case plan and plan for permanent placement, unless the court  
41           finds that the child is unable, unavailable, or unwilling to participate;  
42           and  
43

1 (E) If sibling interaction has been suspended and will continue to be  
2 suspended, sibling interaction is contrary to the safety or well-being of  
3 either child.

4

5 **(d)-(e) \* \* \***

6

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  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</b> <b>the 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>ORDERS UNDER WELFARE AND INSTITUTIONS CODE</b> <b>SECTIONS 366.24, 366.26, 727.3, 727.31</b>	CASE NUMBER:

Child's name:					
Date of birth:	Age:				
Parent's name (if known):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father			
Parent's name (if known):	<input type="checkbox"/> Mother	<input type="checkbox"/> Father			

1. a. Hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Room: \_\_\_\_\_  
 b. Judicial officer: \_\_\_\_\_  
 c. Parties and attorneys present: \_\_\_\_\_

2.  The court has read and considered the assessment prepared under Welfare and Institutions Code section 361.5(g), 366.21(i), 366.22(c), or 366.25(b) and the report and recommendation of the  social worker  probation officer  and other evidence.
3.  The court has considered the wishes of the child, consistent with the child's age, and all findings and orders of the court are made in the best interest of the child.

**THE COURT FINDS AND ORDERS**

4. a.  Notice has been given as required by law.  
 b.  This case involves an Indian child, and the court finds that notice has been given to the parents, Indian custodian, Indian child's tribe, and the Bureau of Indian Affairs (BIA) in accordance with Welfare and Institutions Code section 224.2; the original certified mail receipts, return cards, copies of all notices, and any responses to those notices are in the court file.
5.  **For child 10 years of age or older who is not present:** The child was properly notified under Welfare and Institutions Code section 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
6.  The court takes judicial notice of all prior findings, orders, and judgments in this proceeding.
7.  The court previously made a finding denying or terminating reunification services under Welfare and Institutions Code section 361.5, 366.21, 366.22, 366.25, 727.2, or 727.3, for
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent (name): | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |

CHILD'S NAME:	CASE NUMBER:
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8. a.  There is clear and convincing evidence that it is likely the child will be adopted.
- b.  This case involves an Indian child, and the court finds by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *(If item 8a or 8b is checked, go to item 9 unless item 10, 11, 12, or 13 is applicable. If item 8a or 8b is not checked, go to item 15 or 16.)* **The fact that the child is not placed in a preadoptive home or with a person or family prepared to adopt the child is not a basis for concluding that the child is unlikely to be adopted.**

9. The parental rights of

- a.  parent (name):  Mother  Father
- b.  parent (name):  Mother  Father
- c.  alleged fathers (names):
- d.  unknown mother  all unknown fathers

are terminated, adoption is the child's permanent plan, and the child is referred to the California Department of Social Services or a local licensed adoption agency for adoptive placement.

e. **The adoption is likely to be finalized by (date):**

*(If item 9 is checked, go to item 17.)*

10. This case involves an Indian child. The parental rights of

- a.  parent (name):
- b.  parent (name):
- c.  Indian custodians (names):
- d.  alleged fathers (names):
- e.  unknown mother  all unknown fathers

are modified in accordance with the tribal customary adoption order of the (specify): \_\_\_\_\_ tribe, dated \_\_\_\_\_ and comprising \_\_\_\_\_ pages, which is accorded full faith and credit and fully incorporated herein. The child is referred to the California Department of Social Services or a local licensed adoption agency for tribal customary adoptive placement in accordance with the tribal customary adoption order.

*(If item 10 is checked, go to item 17.)*

11.  The child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship. Removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child. *(If item 11 is checked, go to item 15 or 16.)*

12.  Termination of parental rights would be detrimental to the child for the following reasons *(If item 12 is checked, check reasons below and go to item 15 or 16):*

- a.  The parents or guardians have maintained regular visitation and contact with the child, and the child would benefit from continuing the relationship.
- b.  The child is 12 years or older and objects to termination of parental rights.
- c.  The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent a permanent family placement if the parents cannot resume custody when residential care is no longer needed.
- d.  The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment. Removal of the child from the physical custody of the foster parent or Indian custodian would be detrimental to the emotional well-being of the child. This clause does not apply to any child who is either

- (1) under the age of 6; or
- (2) a member of a sibling group with at least one child under the age of 6 and the siblings are or should be placed together.

CHILD'S NAME:	CASE NUMBER:
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12. e.  There would be substantial interference with the child's sibling relationship.
- f.  The child is an Indian child, and there are compelling reasons for determining that termination of parental rights would not be in the best interest of the child, including, but not limited to:
- (1) Termination of parental rights would substantially interfere with the child's connection to his or her tribal community or the child's tribal membership rights.
  - (2) The child's tribe has identified guardianship or another permanent plan for the child.

13.  Termination of parental rights would not be detrimental to the child, but no adoptive parent has been identified or is available, and the child is difficult to place because the child *(if item 13 is checked, check reasons below and go to item 14)*:
- a.  is a member of a sibling group that should stay together.
  - b.  has a diagnosed medical, physical, or mental disability.
  - c.  is 7 years or older.

14. a.  Termination of parental rights is not ordered at this time. Adoption is the permanent plan, and efforts are to be made to locate an appropriate adoptive family. A report to the court is due by *(date, not to exceed 180 days from the date of this order)*:

*(Do not check in the case of a tribal customary adoption. If item 14a is checked, provide for visitation in items 14b and 14c as appropriate, and go to item 17.)*

- b.  Visitation between the child and
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |

is scheduled as follows *(specify)*:

- c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

15.  The child's permanent plan is legal guardianship.

*(Name)*:  
is appointed legal guardian of the child, and *Letters of Guardianship* will issue. *(Do not check in case of a tribal customary adoption. If item 15 is checked, provide for visitation in items 15a and 15b as appropriate, and go to item 15c or 15d.)*

- a.  Visitation between the child and
- |   |                                 |                                 |
|---|---------------------------------|---------------------------------|
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> parent <i>(name)</i> :         | <input type="checkbox"/> Mother | <input type="checkbox"/> Father |
| <input type="checkbox"/> legal guardian <i>(name)</i> : |                                 |                                 |
| <input type="checkbox"/> other <i>(name)</i> :          |                                 |                                 |

is scheduled as follows *(specify)*:

- b.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

- c.  Dependency       Wardship      is terminated.

- d.  Dependency       Wardship      is terminated. The likely date for termination of the dependency or wardship is *(If this item is checked, go to item 17.)*  
*(date)*:

CHILD'S NAME:	CASE NUMBER:
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The juvenile court retains jurisdiction of the guardianship under Welfare and Institutions Code section 366.4.

16. a.  The child remains placed with *(name of placement)*:  
with a permanent plan of *(specify)*:

- |  |   |
|--|---|
| (1) <input type="checkbox"/> Returning home            | (5) <input type="checkbox"/> Permanent placement with a fit and willing relative  |
| (2) <input type="checkbox"/> Adoption                  | (6) <input type="checkbox"/> Independent living with identification of a caring adult to serve as a lifelong connection |
| (3) <input type="checkbox"/> Tribal customary adoption |   |
| (4) <input type="checkbox"/> Legal guardianship        |   |

**The child's permanent plan is likely to be achieved by *(date)*:**

*(If item 16a is checked, provide for visitation in items 16b and 16c as appropriate, and go to item 17.)*

- b.  Visitation between the child and  
 parent *(name)*:  Mother  Father  
 parent *(name)*:  Mother  Father  
 legal guardian *(name)*:  
 other *(name)*:

is scheduled as follows *(specify)*:

c.  Visitation between the child and *(names)*:  
is detrimental to the child's physical or emotional well-being and is terminated.

17.  The child's placement is necessary.
18.  The child's placement is appropriate.
19.  The agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent plan. If this case involves an Indian child, the court finds that the agency has made active efforts to provide remedial and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.
20.  The services set forth in the case plan include those needed to assist the child age 14 or older in making the transition from foster care to successful adulthood. *(This finding is required only for a child 14 years of age or older.)*
21.  The child remains a  dependent  ward of the court. *(If this box is checked, go to items 22 and 23 if applicable, and items 24 and 25.)*
22.  All prior orders not in conflict with this order will remain in full force and effect.
23.  Other *(specify)*:

24.  Next hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept: \_\_\_\_\_ Room: \_\_\_\_\_
- a.  Continued hearing under section 366.26 for receipt of report on attempts to locate an adoptive family
- b.  Continued hearing under section 366.24(c)(6) for receipt of the tribal customary adoption order
- c.  Six-month postpermanency review

CHILD'S NAME:	CASE NUMBER:
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25. The  Parent (*name*):  Mother  Father  
 Parent (*name*):  Mother  Father  
 Indian custodian (*name*):  
 Child  
 Other (*name*):

have been advised of their appeal rights (under Cal. Rules of Court, rule 5.590).

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

\_\_\_\_\_

JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY 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</b> <b>the 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>FINDINGS AND ORDERS AFTER DISPOSITIONAL HEARING</b> (Welf. & Inst. Code, § 361 et seq.)	CASE NUMBER:

1. This matter came before the court on the  
 original petition     subsequent petition     supplemental petition     other (specify):  
 filed on (date):

**2. Dispositional hearing**

- |   |  |
|---|--|
| a. Date:<br>b. Department:<br>c. Judicial officer (name):<br>d. Court clerk (name): | e. Court reporter (name):<br>f. Bailiff (name):<br>g. Interpreter (name and language): |
|---|--|

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
- (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**3. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- For the purposes of establishing a guardianship, the report of the social worker includes an assessment as specified in Welf. & Inst. Code, §§ 360(a), 361.5(g).
  - In the case of an Indian child, the report of the social worker includes an assessment in consultation with the Indian child's tribe, as specified in Welf. & Inst. Code, § 358.1(j), whether tribal customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful.
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):
- f.  Testimony of qualified expert under the Indian Child Welfare Act

CHILD'S NAME:	CASE NUMBER:
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**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 4. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.
- 5. a.  The child  is  maybe an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
- 6.  A Court Appointed Special Advocate is appointed for the child.

**7. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
  - (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**8. The court informed and advised the**

- |  |  |   |                                |
|--|--|---|--------------------------------|
| <input type="checkbox"/> mother                    | <input type="checkbox"/> biological father | <input type="checkbox"/> legal guardian   | <input type="checkbox"/> child |
| <input type="checkbox"/> presumed father           | <input type="checkbox"/> alleged father    | <input type="checkbox"/> Indian custodian |                                |
| <input type="checkbox"/> other ( <i>specify</i> ): |  |   |                                |

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

9. The  mother  biological father  legal guardian  child  
 presumed father  alleged father  Indian custodian  
 other (*specify*):

**has knowingly and intelligently waived the right** to court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**10.  Sibling group**

The child and the child's siblings listed below form a sibling group in which at least one child in the sibling group was under the age of three years at the time of the initial removal and all children in the sibling group were removed from parental custody at the same time.

Sibling (*name*):

- a.
- b.
- c.
- d.
- e.
- f.

CHILD'S NAME:	CASE NUMBER:
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11. **Disposition is ordered as stated in** (check appropriate box and attach indicated form):
- a.  *Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision (Welf. & Inst. Code, § 360(b))* (form JV-416), which is attached and incorporated by reference.
  - b.  *Dispositional Attachment: In-Home Placement With Formal Supervision (Welf. & Inst. Code, § 361)* (form JV-417), which is attached and incorporated by reference.
  - c.  *Dispositional Attachment: Appointment of Guardian (Welf. & Inst. Code, § 360(a))* (form JV-418), which is attached and incorporated by reference.
  - d.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-420), which is attached and incorporated by reference.
  - e.  *Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent (Welf. & Inst. Code, §§ 361, 361.2)* (form JV-421), which is attached and incorporated by reference.

12. **The child's rights** under Welf. & Inst. Code, § 388 and the procedure for bringing a petition under Welf. & Inst. Code, § 388, including the availability of appropriate and necessary forms, was provided to the child as follows:
- a.  Child under the age of 12 years, through the child's attorney of record or guardian ad litem
  - b.  Child 12 years of age or older who was present at the hearing, on the record and in writing by handing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)
  - c.  Child 12 years of age or older who was present at the hearing, in writing by mailing the child a copy of *Child's Information Sheet—Request to Change Court Order* (form JV-185)

13.  **Contact with the child is ordered as stated in** (check appropriate box and attach indicated form):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).

14. The child's medical, dental, mental health, and educational information required by Welfare and Institutions Code section 16010 was provided by the  mother  biological father  legal guardian  presumed father  alleged father  Indian custodian  other (specify):

15. **All prior orders not in conflict with this order remain in full force and effect.**

16.  **Other findings and orders:**
- a.  See attached.
  - b.  (Specify):

17.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
---------------	-------	-------	-------

- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Six-month permanency hearing (Welf. & Inst. Code, § 366.21(e))
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

18.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

CHILD'S NAME:	CASE NUMBER:
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19. Number of pages attached: \_\_\_\_\_

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

\_\_\_\_\_

JUDGE     JUDGE PRO TEMPORE

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

\_\_\_\_\_

COMMISSIONER     REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:
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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. & 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 the 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,
- a.  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.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
  - c.  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**

7. a.  The county agency has exercised due diligence to identify, locate, and contact the child's relatives.
- b.  The county agency has not exercised due diligence to identify, locate, and contact the child's relatives.
- (1)  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 the family or domestic violence.
  - (2)  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 county 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 placement.
- b.  Other (*specify*):
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*):

CHILD'S NAME:	CASE NUMBER:
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**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 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.
- 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.

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20. 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 services. 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  Presumed father  
 Indian custodian  Other (*specify*):

- b. **The likely date** by which the child may be returned to and safely maintained in the home or placed for adoption, in legal guardianship, or in an identified placement with a specific goal is (*specify*):

**Efforts**

22. The county agency  has  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:**

	None	Minimal	Adequate	Substantial	Excellent
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 ( <i>specify</i> ):	<input type="checkbox"/>				

**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.

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**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 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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (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 child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
30.  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: \_\_\_\_\_
31.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 30:  
 a.  Social worker.  
 b.  Parent (*name*): \_\_\_\_\_  
 c.  Surrogate parent (*name*): \_\_\_\_\_  
 d.  Educational representative (*name*): \_\_\_\_\_  
 e.  Other (*name*): \_\_\_\_\_
32.  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.
33.  **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: \_\_\_\_\_

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**Advisements**

34.  **Child under the age of three years or 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 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 the child entered foster care under Welf. & Inst. Code, § 366.21(e).

**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.**

35.  **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.**

**Twelve-month permanency hearing date:**

36.  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(f)(19) of the California Rules of Court to any party not present.

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- 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 had 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)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:          <b>FOR COURT USE ONLY</b>          <b>DRAFT</b> <b>Not approved by</b> <b>the 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>FINDINGS AND ORDERS AFTER SIX-MONTH STATUS REVIEW HEARING</b> (Welf. & Inst. Code, § 366.21(e))	CASE NUMBER:

**1. Six-month status review hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

h. Party (name):	Present	Attorney (name):	Present	Appointed today
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child     mother     father     representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child     mother     father     representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child     mother     father     representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. 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 whatever steps are necessary to finalize the permanent placement of the child.

- 11.  The child  is  may be an Indian child, and
  - a.  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.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**12. 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 ( <i>specify</i> ):	<input type="checkbox"/>				

**Siblings**

- 13.  **The child does not have siblings under the court's jurisdiction.**
- 14.  **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**

- 15. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- 16. 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.

17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.

- 18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:
  - a.  stated in the social worker's report.
  - b.  specified here:

CHILD'S NAME:	CASE NUMBER:
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19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:

- a.  Social worker.
- b.  Parent (*name*):
- c.  Surrogate parent (*name*):
- d.  Educational representative (*name*):
- e.  Other (*name*):

20.  The child's education placement has changed since the last review hearing.

- 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.

21.  **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:

22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):

- a.  *Six-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(e))* (form JV-431), which is attached and incorporated by reference.
- b.  *Six-Month Prepermanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(e))* (form JV-432), which is attached and incorporated by reference.
- c.  *Six-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(e))* (form JV-433), which is attached and incorporated by reference.

23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):

- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

24. **All prior orders not in conflict with this order remain in full force and effect.**

25.  **Other findings and orders:**

- a.  See attached.
- b.  (*Specify*):

CHILD'S NAME:	CASE NUMBER:
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26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  12-month permanency hearing (Welf. & Inst. Code, § 366.21(f))
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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d.  Other (*specify*):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

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

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

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:
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**SIX-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(e))**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

- 2. **The child's out-of-home placement is necessary.**
- 3.  **The child's current placement is appropriate.**
- 4.  **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-430, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (specify):
- 5.  **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.  does not continue to be 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-430, item 26 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**

- 6.  **Reunification services terminated: Child under age of three years at time of removal or member of sibling group**
  - a.  The child was under the age of three years on the date of the initial removal from the home.
  - b.  The child and the child's siblings listed below form a sibling group in which one child in the sibling group was under the age of three years at the time of the initial removal, and all children in the sibling group were removed from parental custody at the same time.
    - (1)
    - (2)
    - (3)
    - (4)
    - (5)
    - (6)
  - c. By clear and convincing evidence the
    - mother  biological father  Indian custodian
    - presumed father  legal guardian
    - other (specify):

failed to participate regularly and make substantive progress in a court-ordered treatment plan. Reunification services are terminated.
  - d. Scheduling a hearing under Welf. & Inst. Code, § 366.26 for this child and some or all members of the sibling group is in the child's best interest. The factual basis for this finding is stated on the record.

CHILD'S NAME:	CASE NUMBER:
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7.  **Reunification services terminated: Child of any age**
- a.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because, by clear and convincing evidence,  
(1)  the child was initially removed from the person indicated under Welf. & Inst. Code, § 300(g) and the person's whereabouts remain unknown.  
(2)  the person has not had contact with the child for six months.
- b.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because, by clear and convincing evidence, that person has been convicted of a felony indicating parental unfitness.
- c.  Reunification services are terminated for the  
 mother                       biological father                       Indian custodian  
 presumed father                       legal guardian  
 other (*specify*):  
because it is determined that the person is deceased.
8.  Reunification services are terminated for the  
 mother                       legal guardian  
 presumed father                       Indian custodian  
 other (*specify*):  
because the child was removed initially under Welf. & Inst. Code, § 300(g) and, by clear and convincing evidence, the person's whereabouts are still unknown.
9. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

10.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationship with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
(1)  as stated on the record.  
(2)  as follows:

**Health**

11.  The  mother                       biological father                       other (*specify*):  
 presumed father                       legal guardian  
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.

CHILD'S NAME:	CASE NUMBER:
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**Setting for selection of permanent plan**

12.  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 reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
  - 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 (Juvenile Dependency)* (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 must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  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):
  - g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative is (*specify date*):

13.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

- a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
  - b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_
    - (1)  Return home.
    - (2)  Adoption.
    - (3)  Tribal customary adoption.
    - (4)  Legal guardianship
    - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:
 

<input type="checkbox"/> return home	<input type="checkbox"/> legal guardianship
<input type="checkbox"/> emancipation	<input type="checkbox"/> placement with a relative
<input type="checkbox"/> other ( <i>specify</i> ): _____	
- The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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13. c.  The court finds that the barriers to achieving the child's permanent plans are *(describe)*:  
[Redacted]

14.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe)*:  
[Redacted]

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*:  
[Redacted]

c. The compelling reasons why the other permanent plan options are not in *(name of the child)* best interests are *(describe)*:  
[Redacted]

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</b> <b>the 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>FINDINGS AND ORDERS AFTER</b> <b>12-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.21(f))	CASE NUMBER:

**1. Twelve-month permanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

<b>CHILD'S NAME:</b>	CASE NUMBER:
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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  **The following were not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  **The following were not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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**Efforts**

**10. 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 whatever steps are necessary to finalize the permanent placement of the child.

**11.  The child  is  may be an Indian child, and**

- a.  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.
- b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**12. 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 ( <i>specify</i> ):	<input type="checkbox"/>				

**Siblings**

**13.  The child does not have siblings under the court's jurisdiction.**

**14.  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**

**15. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.

- 16. 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.

**17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on**

**18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:**

- a.  stated in the social worker's report.
- b.  specified here:

<b>CHILD'S NAME:</b>	CASE NUMBER:
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19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:
- a.  Social worker.
  - b.  Parent (*name*):
  - c.  Surrogate parent (*name*):
  - d.  Educational representative (*name*):
  - e.  Other (*name*):
20.  The child's education placement has changed since the last review hearing.
- 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.
21.  **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:
22. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- a.  *Twelve-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.21(f))* (form JV-436), which is attached and incorporated by reference.
  - b.  *Twelve-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.21(f))* (form JV-437), which is attached and incorporated by reference.
  - c.  *Twelve-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.21(f))* (form JV-438), which is attached and incorporated by reference.
23.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - b.  *Visitation Attachment: Sibling* (form JV-401).
  - c.  *Visitation Attachment: Grandparent* (form JV-402).
24. **All prior orders not in conflict with this order remain in full force and effect.**
25.  **Other findings and orders:**
- a.  See attached.
  - b.  (*Specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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26.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  18-month permanency hearing (Welf. & Inst. Code, § 366.22)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (*specify*):

27.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

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

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

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

CHILD'S NAME:	CASE NUMBER:
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**TWELVE-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.21(f))**

- By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
- Reunification services are terminated.**

**Placement**

- The child's out-of-home placement is necessary.**
- The child's current placement is appropriate.**
- The child's current placement is not appropriate.** The county agency must locate an appropriate placement for the child.
  - The matter is continued to the date and time indicated in form JV-435, item 26 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - Other (*specify*):
- The child is placed outside the state of California and that out-of-state placement**
  - continues to be the most appropriate placement for the child and is in the best interest of the child.
  - does not continue to be 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-435, item 26 for a  written  oral report by the county agency on the progress made toward
    - returning the child to California and locating an appropriate placement within California.
    - locating an out-of-state placement that is the most appropriate placement for the child and in the best interest of the child.
    - other (*specify*):
- The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

- Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
  - The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - as stated on the record.
    - as follows:

**Health**

- The  mother  biological father  other (*specify*):  
 presumed father  legal guardian  
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.

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**Selection of permanent plan**

10.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

11.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information (*describe*): \_\_\_\_\_

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*): \_\_\_\_\_

c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*): \_\_\_\_\_

12.  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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

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 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 must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.

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- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  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):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  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</b> <b>the 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>FINDINGS AND ORDERS AFTER 18-MONTH PERMANENCY HEARING</b> (Welf. & Inst. Code, § 366.22)	CASE NUMBER:

**1. Eighteen-month permanency hearing**

- |                             |                                     |
|-----------------------------|-------------------------------------|
| a. Date:                    | e. Court reporter (name):           |
| b. Department:              | f. Bailiff (name):                  |
| c. Judicial officer (name): | g. Interpreter (name and language): |
| d. Court clerk (name):      |                                     |

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
i. Others present in courtroom:				
(1) Court Appointed Special Advocate (CASA) volunteer (name):				
(2) Other (name):				
(3) Other (name):				

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated:
- b.  Report of CASA volunteer dated:
- c.  Case plan dated:
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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**Efforts**

**10. 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 whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child  is  may be an Indian child, and
- a.  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.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**13. 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 ( <i>specify</i> ):	<input type="checkbox"/>				

**Siblings**

14.  **The child does not have siblings under the court's jurisdiction.**
15.  **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**

16. 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 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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (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.
17. 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.

18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on .

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19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
- stated in the social worker's report.
  - specified here:
20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
21.  The child's education placement has changed since the last review hearing.
- 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.
  - The child is enrolled in school.
  - The child is attending school.
22.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - 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.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
23. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Eighteen-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.22)* (form JV-441), which is attached and incorporated by reference.
  - Eighteen-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.22)* (form JV-442), which is attached and incorporated by reference.
  - Eighteen-Month Permanency Attachment: Reunification Services Continued (Welf. & Inst. Code, § 366.25)* (form JV-443), which is attached and incorporated by reference.
24.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).
25. **All prior orders not in conflict with this order remain in full force and effect.**

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26.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Twenty-four-month permanency hearing (Welf. & Inst. Code, § 366.25)
- c.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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- d.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- e.  Other (specify):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

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

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

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.22)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **Reunification services are terminated.**

**Placement**

3. **The child's out-of-home placement is necessary.**
4.  **The child's current placement is appropriate.**
5.  **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-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (*specify*):
6.  **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.  does not continue to be 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-440, item 27 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*):
7. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

**Important individuals**

8.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
  - a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
  - c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:

**Health**

9.  The  mother  biological father  other (*specify*):  
 presumed father  legal guardian
- 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.

CHILD'S NAME:	CASE NUMBER:
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**Selection of permanent plan**

10.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

a.  The child's permanent plan is placement with *(name)*: \_\_\_\_\_ a fit and willing relative.

The likely date by which the child's permanent plan will be achieved is *(specify date)*: \_\_\_\_\_

b.  The child remain in foster care with a permanent plan of *(specify)*: \_\_\_\_\_

(1)  Return home.

(2)  Adoption.

(3)  Tribal customary adoption.

(4)  Legal guardianship.

(5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.

The likely date by which the child's permanent plan will be achieved is *(specify date)*: \_\_\_\_\_

c.  The court finds that the barriers to achieving the child's permanent plans are *(describe)*: \_\_\_\_\_

11.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe)*: \_\_\_\_\_

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*: \_\_\_\_\_

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe)*: \_\_\_\_\_

12.  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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.

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 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 must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.

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- e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
- f.  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):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

CHILD'S NAME:	CASE NUMBER:
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**EIGHTEEN-MONTH PERMANENCY ATTACHMENT: REUNIFICATION SERVICES CONTINUED**  
**(Welf. & Inst. Code, § 366.22)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.

**Placement**

2. **The child's out-of-home placement is necessary.**
3.  **The child's current placement is appropriate.**
4.  **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-440, item 25 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
5.  **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.  does not continue to be 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-440, item 25 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**

6. **By clear and convincing evidence, it is in the best interest of the child to provide additional reunification services to this**
- a.  mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- (1)  who is making significant and consistent progress in a substance abuse treatment program.
- (2)  who is recently discharged from incarceration, institutionalization, or the custody of the Department of Homeland Security and making significant and consistent progress in establishing a safe home for the child's return.
- (3)  who was a minor parent or a nonminor dependent parent at the time of the initial hearing and is making significant and consistent progress in establishing a safe home for the child's return.

and

- b. **There is a substantial probability that the child may be returned to the**
- mother  biological father  Indian custodian  
 presumed father  legal guardian  other (*specify*):
- by the date set for the 24-month permanency hearing under Welf. & Inst. Code, § 366.22 because the person has
- (1) consistently and regularly contacted and visited the child;
- (2) made significant and consistent progress in the prior 18 months in resolving the problems that led to the child's removal from the home; and
- (3) demonstrated the capacity and ability to provide for the safety, protection, physical and emotional health, and special needs of the child and
- (a)  to complete the objectives of his or her substance abuse treatment plan as evidenced by reports from a substance abuse provider.
- (b)  to complete a treatment plan postdischarge from incarceration or institutionalization.

CHILD'S NAME:	CASE NUMBER:
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6. c. The court finds reasonable reunification services have not been provided. Based on this finding and other relevant factors, including the likelihood of success of further reunification services and the child's need for a prompt resolution of dependency status, the court finds good cause to continue reunification services to

**7. Reunification services are continued for the**

- mother                       biological father                       Indian custodian  
 presumed father                       legal guardian                       other (*specify*):

- a.  as previously ordered.  
 b.  as modified  
     (1)  on the record.  
     (2)  in the case plan.

8.  **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

**Important individuals**

9.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.  
 b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.  
 c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
     (1)  as stated on the record.  
     (2)  as follows:

**Health**

10.  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.

**Advisement**

11. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the 24-month permanency hearing set on a date within 24 months from the date the child was initially removed from his or her home, the case may be referred to a selection and implementation hearing under Welf. & Inst. Code, § 366.26. **That 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.**

Twenty-four-month permanency hearing date:



CHILD'S NAME:	CASE NUMBER:
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5.  A Court Appointed Special Advocate is appointed for the child.

#### Placement

6. **The child's out-of-home placement is necessary.**
7.  **The child's current placement is appropriate.**
8.  **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 item 31 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):
9.  **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.  does not continue to be 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 item 31 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*):

#### Case plan development

10. a.  The child was actively involved in the case plan development, including the child's plan for permanent placement.
- b.  The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
- (1)  the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
- (2)  the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.
11.  **Child 12 years of age and older:**
- a.  The child was given the opportunity to review the case plan, sign it, and receive a copy.
- b.  The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
- (1)  the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The county agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
- (2)  the county agency is not required to actively involve the child because the child is unable, unavailable, or unwilling to participate.

#### Efforts

##### 12. The county agency

a.  has

b.  has not

complied with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

13. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

CHILD'S NAME:	CASE NUMBER:
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14.  **Child not yet placed with prospective adoptive parent or a guardian**
- a. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
- b. The child has identified the following as an individual important to him or her:  
 (1) (name):  
 (2) (name):
- c. The county agency  has  has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.
- d. The county agency  has  has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.
- e. The county agency  has  has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.
- f.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services  
 (1)  as stated on the record.  
 (2)  as follows:
- g.  To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service  
 (1)  as stated on the record.  
 (2)  as follows:

15. The services provided to the child have been
- a.  adequate.
- b.  not adequate.

**Health and education**

16. 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.
17. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
18.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 16 or other concerns are:  
 a.  stated in the social worker's report.  
 b.  specified here:
19.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 18:  
 a.  Social worker.  
 b.  Surrogate parent (name):  
 c.  Educational representative (name):  
 d.  Other (name):

CHILD'S NAME:	CASE NUMBER:
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20.  The child's education placement has changed since the last review hearing.
- 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.
21.  **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:

### Siblings

22.  **The child does not have siblings under the court's jurisdiction.**
23.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.
24.  The child has siblings. A postadoption sibling contact agreement  has  has not been developed. If not, the court has inquired into the status of the development of a voluntary postadoption sibling contact agreement.

### Permanent plan

25.  a. The permanent plan of adoption is appropriate and is ordered to continue as the permanent plan.  
b. **The likely date** by which the child's adoption will be finalized is (*specify date*):
26.  a. The permanent plan of tribal customary adoption is appropriate and is ordered to continue as the permanent plan.  
b. **The likely date** by which the child's tribal customary adoption will be finalized is (*specify date*):
27.  a. The child's permanent plan of adoption may or may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child. 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, § 366.22(b).  
b. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):
28.  **Contact with the child is ordered as follows** (*check appropriate box and attach indicated form*):
- a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  *Visitation Attachment: Sibling* (form JV-401).
- c.  *Visitation Attachment: Grandparent* (form JV-402).

29. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:
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30.  **Other findings and orders:**

- a.  See attached.
- b.  (Specify):

31.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- c.  Other (specify):

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

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

JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

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</b> <b>the 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>FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—          PERMANENT PLAN OTHER THAN ADOPTION</b> (Welf. & Inst. Code, § 366.3)	CASE NUMBER:

**1. Postpermanency hearing**

- a. Date:
- b. Department:
- c. Judicial officer (name):
- d. Court clerk (name):
- e. Court reporter (name):
- f. Bailiff (name):
- g. Interpreter (name and language):

	Present	Attorney (name):	Present	Appointed today
h. <u>Party (name):</u>				
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name):
  - (2) Other (name):
  - (3) Other (name):

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker (dated):
- b.  Report of CASA volunteer (dated):
- c.  Case plan (dated):
- d.  Other (specify):
- e.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

<b>CHILD'S NAME:</b>	CASE NUMBER:
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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
  - (2) alleged parent (*name*):
  - (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- Other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       Indian custodian                       child
- presumed father                       alleged father                       other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Placement**

**9. Continued out-of-home placement is in the best interest of the child.**

**10. The child's out-of-home placement is necessary.**

11.  **The child's current placement is appropriate.**

12.  **The child's current placement is not appropriate.** The county agency must locate an appropriate place for the child.

- a.  The matter is continued to the date and time indicated in item 39 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
- b.  Other (*specify*):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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13.  **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.  does not continue to be 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 item 39 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*):
14. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.

### Case plan development

15. a.  The child was actively involved in the case plan development, including the child's plan for permanent placement.
- b.  The child was not actively involved in the case plan development, including the child's plan for permanent placement, and
- (1)  the county agency is ordered to actively involve the child in the case plan development, including the plan for permanent placement, and to submit to the court an updated case plan within 30 days of the date of this hearing.
- (2)  the county agency is not required to actively involve the child in the case plan development because the child was unable, unavailable, or unwilling to participate.
16.  **Child 12 years of age or older:**
- a.  The child was given the opportunity to review the case plan, sign it, and receive a copy.
- b.  The child was not given the opportunity to review the case plan, sign it, and receive a copy, and
- (1)  the county agency is ordered to provide the child with the opportunity to review the case plan, sign it, and receive a copy. The agency is further ordered to submit to the court within 30 days of the date of this hearing written confirmation that the child was provided with this opportunity.
- (2)  the county agency is not required to give the child this opportunity because the child was unable, unavailable, or unwilling to participate.

### Efforts

#### 17. The county agency

- a.  has
- b.  has not

compiled with the case plan by making reasonable efforts, including whatever steps are necessary to make and to finalize the permanent placement of the child.

18. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

#### 19. The services provided to the child have been

- a.  adequate.
- b.  not adequate.

<b>CHILD'S NAME:</b>	CASE NUMBER:
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20.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a. The child has identified the following as an individual important to him or her:
    - (1) (name):
    - (2) (name):
  - b. The county agency  has  has not made efforts to identify individuals who are important to the child, consistent with the child's best interest.
  - c. The county agency  has  has not made efforts to maintain the child's relationships with the individuals who are important to the child, consistent with the child's best interest.
  - d. The county agency  has  has not made efforts to identify a prospective adoptive parent or a legal guardian for the child.
  - e.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
    - (1)  as stated on the record.
    - (2)  as follows:
  - f.  To identify a prospective adoptive parent or a legal guardian for the child, the county agency must provide the service
    - (1)  as stated on the record.
    - (2)  as follows:

**Siblings**

21.  **The child does not have siblings under the court's jurisdiction.**
22.  **The child has siblings under the court's jurisdiction.** *Sibling Attachment: Contact and Placement* (form JV-403) is attached and incorporated by reference.
23.  The child has siblings. A postadoption sibling contact agreement  has  has not been developed. If not, the court has inquired into the status of the development of a voluntary postadoption sibling contact agreement.

**Education**

24. 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.
25.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 24 or other concerns are:
- a.  stated in the social worker's report.
  - b.  specified here:
26.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 25:
- a.  Social worker.
  - b.  Parent (name):
  - c.  Surrogate parent (name):
  - d.  Educational representative (name):
  - e.  Other (name):

<b>CHILD'S NAME:</b>	CASE NUMBER:
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27.  The child's education placement has changed since the last review hearing.
- 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.

28.  **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:

**Health**

29. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.

30.  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.

**Permanent plan**

31. It is ordered that:

- a. The child's permanent plan is legal guardianship. \_\_\_\_\_  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- b. The child's permanent plan is placement with a fit and willing relative. \_\_\_\_\_  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
- c. The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_
  - (1)  Return home. \_\_\_\_\_
  - (2)  Adoption. \_\_\_\_\_
  - (3)  Tribal customary adoption. \_\_\_\_\_
  - (4)  Legal guardianship. \_\_\_\_\_
  - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:
    - return home  legal guardianship
    - emancipation  placement with a relative
    - other (*specify*): \_\_\_\_\_

The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_

<b>CHILD'S NAME:</b>	CASE NUMBER:
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31. d. The court finds that the barriers to achieving the child's permanent plan are *(describe)*:  
 [Redacted]

32.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a. The court asked the child where he or she wants to live and the child provided the following information *(describe)*:  
 [Redacted]

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*:  
 [Redacted]

c. The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe)*:  
 [Redacted]

33.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.

34.  The child's permanent plan identified in item 31 is appropriate and continues as the permanent plan.

35.  a. The child's permanent plan identified in item 31 may not be appropriate, and the matter is ordered set for a hearing under Welf. & Inst. Code, § 366.26 to select the most appropriate permanent plan for the child.

b. 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, § 366.22(b).

c. 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 5.708(n)(5) of the California Rules of Court to any party not present.

d. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.

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)*:

36.  **Contact with the child is ordered as stated in** *(check appropriate box and attach indicated form)*:

a.  *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b.  *Visitation Attachment: Sibling* (form JV-401).

c.  *Visitation Attachment: Grandparent* (form JV-402).

<b>CHILD'S NAME:</b>	CASE NUMBER:
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37. All prior orders not in conflict with this order remain in full force and effect.

38.  Other findings and orders:

- a.  See attached.
- b.  (Specify):

39.  The next hearing is scheduled as follows:

Hearing date:	Time:	Dept:	Room:
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- a.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)
- b.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- c.  Other (specify):

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

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

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

ATTORNEY OR PARTY WITHOUT ATTORNEY 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</b> <b>the 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>FINDINGS AND ORDERS AFTER 24-MONTH PERMANENCY HEARING</b> <b>(Welf. &amp; Inst. Code, § 366.25)</b>	CASE NUMBER:

**1. Twenty-four-month permanency hearing**

- a. Date: \_\_\_\_\_ e. Court reporter (name): \_\_\_\_\_
- b. Department: \_\_\_\_\_ f. Bailiff (name): \_\_\_\_\_
- c. Judicial officer (name): \_\_\_\_\_ g. Interpreter (name and language): \_\_\_\_\_
- d. Court clerk (name): \_\_\_\_\_

h. <u>Party (name):</u>	<u>Present</u>	<u>Attorney (name):</u>	<u>Present</u>	<u>Appointed today</u>
(1) Child:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(2) Mother:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(3) Father—presumed:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(4) Father—biological:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(5) Father—alleged:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(6) Legal guardian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(7) Indian custodian:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(8) De facto parent:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(9) County agency social worker:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(10) Tribal representative:	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
(11) Other (specify):	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

- i. Others present in courtroom:
  - (1) Court Appointed Special Advocate (CASA) volunteer (name): \_\_\_\_\_
  - (2) Other (name): \_\_\_\_\_
  - (3) Other (name): \_\_\_\_\_

**2. The court has read and considered and admits into evidence:**

- a.  Report of social worker dated: \_\_\_\_\_
- b.  Report of CASA volunteer dated: \_\_\_\_\_
- c.  Case plan dated: \_\_\_\_\_
- d.  Other (specify): \_\_\_\_\_
- e.  Other (specify): \_\_\_\_\_

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

- 3. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child 10 years of age or older who is not present:** The child was properly notified under Welf. & Inst. Code, § 349(d) of his or her right to attend the hearing, was given an opportunity to be present, and there is no good cause for a continuance to enable the child to be present.

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4. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.
5.  A Court Appointed Special Advocate is appointed for the child.

**6. Parentage**

- a.  The court inquired of the child's parents present at the hearing and other appropriate persons present as to the identity and addresses of all presumed or alleged parents of the child. All alleged parents present during the hearing who had not previously submitted a *Statement Regarding Parentage (Juvenile)* (form JV-505) were provided with and ordered to complete form JV-505 and submit it to the court.
- b.  The clerk of the court is ordered to provide the notice required by Welf. & Inst. Code, § 316.2 to
- (1) alleged parent (*name*):
- (2) alleged parent (*name*):
- (3) alleged parent (*name*):

**Advisements and waivers**

**7. The court has informed and advised the**

- mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

of the following: the right to assert the privilege against self-incrimination; the right to confront and cross-examine the persons who prepared the reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; the right to subpoena witnesses; the right to present evidence on one's own behalf; and the right of the child and each parent, legal guardian, and Indian custodian to be present and to be represented by counsel at every stage of the proceedings. The court may appoint counsel subject to the court's right to seek reimbursement, if an individual is entitled to appointed counsel and the individual is financially unable to retain counsel.

8. The  mother                       biological father                       legal guardian                       child
- presumed father                       alleged father                       Indian custodian
- other (*specify*):

**has knowingly and intelligently waived the right** to a court trial on the issues, the right to assert the privilege against self-incrimination, the right to confront and cross-examine adverse witnesses, the right to subpoena witnesses, and the right to present evidence on his or her own behalf.

**Case plan development**

9. a.  The following were actively involved in the case plan development, including the child's plan for permanent placement.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- b.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is ordered to actively involve them and submit an updated case plan within 30 days of the date of this hearing.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):
- c.  The following were **not** actively involved in the case plan development, including the child's plan for permanent placement. The county agency is not required to involve them because these persons are unable, unavailable, or unwilling to participate.
- child                       mother                       father                       representative of child's identified Indian tribe
- other (*specify*):

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**Efforts**

**10. 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 whatever steps are necessary to finalize the permanent placement of the child.

11. The child is 16 years of age or older and the agency  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

12.  The child  is  may be an Indian child, and
- a.  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.
  - b.  active efforts were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

**13. 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 ( <i>specify</i> ):	<input type="checkbox"/>				

**Siblings**

- 14.  **The child does not have siblings under the court's jurisdiction.**
- 15.  **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**

- 16. 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) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (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 *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535) filed in this matter. The educational rights and responsibilities of the educational representative are described in rule 5.650(e) and (f) of the California Rules of Court. A copy of rule 5.650(e) and (f) may be obtained from the court clerk.
- 17. 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.

18. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on

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19.  The additional services, assessments, and/or evaluations the child requires to meet the unmet needs specified in item 17 or other concerns are:
- stated in the social worker's report.
  - specified here:
20.  The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item 19:
- Social worker.
  - Parent (*name*):
  - Surrogate parent (*name*):
  - Educational representative (*name*):
  - Other (*name*):
21.  The child's education placement has changed since the last review hearing.
- 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.
  - The child is enrolled in school.
  - The child is attending school.
22.  **Child 14 years of age or older:**
- The services stated in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
  - 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.
  - To assist the child in making the transition to successful adulthood, the county agency must add to the case plan and provide the services
    - stated on the record.
    - as follows:
23. **Placement and services are ordered as stated in** (*check appropriate boxes and attach indicated forms*):
- Twenty-Four-Month Permanency Attachment: Child Reunified (Welf. & Inst. Code, § 366.25)* (form JV-456), which is attached and incorporated by reference.
  - Twenty-Four-Month Permanency Attachment: Reunification Services Terminated (Welf. & Inst. Code, § 366.25)* (form JV-457), which is attached and incorporated by reference.
24.  **Contact with the child is ordered as stated in** (*check appropriate box and attach indicated form*):
- Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - Visitation Attachment: Sibling* (form JV-401).
  - Visitation Attachment: Grandparent* (form JV-402).
25. **All prior orders not in conflict with this order remain in full force and effect.**
26.  **Other findings and orders:**
- See attached.
  - (*Specify*):

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27.  **The next hearing is scheduled as follows:**

Hearing date:	Time:	Dept:	Room:
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- a.  In-home status review hearing (Welf. & Inst. Code, § 364)
- b.  Selection and implementation hearing (Welf. & Inst. Code, § 366.26)  
*(Also schedule a Welf. & Inst. Code, § 366.3 status review hearing within six months.)*

Hearing date:	Time:	Dept:	Room:
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- c.  Postpermanency hearing (Welf. & Inst. Code, § 366.3)
- d.  Other (*specify*):

28.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved of the duty to provide further representation.

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

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

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JUDGE   
 JUDGE PRO TEMPORE   
 COMMISSIONER   
 REFEREE

**For Your Information**

You may have a right to appellate review of some or all of the orders made during this hearing. Contact your attorney to discuss your appellate rights. Decisions made at the next hearing may also be subject to appellate review. If you do not attend the next hearing you may not be advised of your appellate rights. Contact your attorney if you miss the next hearing and want to discuss your appellate rights.

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**TWENTY-FOUR-MONTH PERMANENCY ATTACHMENT:  
REUNIFICATION SERVICES TERMINATED  
(Welf. & Inst. Code, § 366.25)**

1. By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
2. **The child's out-of-home placement is necessary.**
3. **Reunification services are terminated.**
4.  **The child's current placement is appropriate.**
5.  **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-440, item 27 for a  written  oral report by the county agency on the progress made in locating an appropriate placement.
  - b.  Other (*specify*):
6.  **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.  does not continue to be 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-440, item 27 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*):

**Selection of permanent plan**

7. The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the child could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
8.  **By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welf. & Inst. Code, § 366.26 is not in the best interest of the child** because the child is not a proper subject for adoption at this time and a potential legal guardian has not been identified.
  - a.  The child's permanent plan is placement with (*name*): \_\_\_\_\_ a fit and willing relative.  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
  - b.  The child remain in foster care with a permanent plan of (*specify*): \_\_\_\_\_
    - (1)  Return home.
    - (2)  Adoption.
    - (3)  Tribal customary adoption.
    - (4)  Legal guardianship.
    - (5)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.  
The likely date by which the child's permanent plan will be achieved is (*specify date*): \_\_\_\_\_
  - c.  The court finds that the barriers to achieving the child's permanent plans are (*describe*): \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
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9.  **For children 16 years of age or older placed in another planned permanent living arrangement:**
- a. The court asked the child where he or she wants to live and the child provided the following information (*describe*):
  - b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because (*describe*):
  - c. The compelling reasons why the other permanent plan options are not in the child's best interest are (*describe*):
10.  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, reasonable services have been provided or offered to the child's parents, legal guardian, or Indian custodian.
  - 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 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 must provide written notice as stated in rule 5.708(n)(5) of the California Rules of Court to any party not present.
  - e. The court advised each parent present in court of the date, time, and place of the hearing set under Welf. & Inst. Code, § 366.26; their right to counsel; the nature of the proceedings; and the requirement that at the proceedings the court must select and implement a plan of adoption, guardianship, or an identified placement with a specific goal for the child. The court ordered each parent present in court to appear for the hearing set under Welf. & Inst. Code, § 366.26 and directed that each parent be notified hereafter by first-class mail to his or her usual place of residence or business only.
  - f.  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*):
- g. **The likely date** by which the child may be placed for adoption, tribal customary adoption, legal guardianship, or with a fit and willing relative (*specify date*):

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**Important individuals**

11.  **Child 10 years of age or older, placed in a group home for six months or longer from the date the child entered foster care**
- a.  The county agency has made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- b.  The county agency has not made efforts to identify individuals who are important to the child and to maintain the child's relationships with those individuals, consistent with the child's best interest.
- c.  To identify individuals who are important to the child and to maintain the child's relationships with those individuals, the county agency must provide the services
- (1)  as stated on the record.
- (2)  as follows:

**Health**

12.  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.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: 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</b> <b>the Judicial Council</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>FINDINGS AND ORDERS AFTER NONMINOR DEPENDENT STATUS REVIEW HEARING</b>	CASE NUMBER:	
Judicial Officer:	Court Clerk:	Court Reporter:
Baliff:	Other Court Personnel:	Interpreter: Language:

- |                                 |                          |  |                  |                          |
|---------------------------------|--------------------------|--|------------------|--------------------------|
| 1. Parties (name)               | Present                  |  | Attorney (name): | Present                  |
| a. Nonminor dependent:          | <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. Tribal representative (name):
3. Others present in courtroom
- a. Other (specify):
- b. Other (specify):
- c. Other (specify):
- d. Other (specify):
4. **The court has read and considered and admits into evidence:**
- a.  Report of social worker dated:
- b.  Report of probation officer dated:
- c.  Other (specify):
- d.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS:**

5. Notice of the date, time, and location of the hearing was given as required by law.
6.  **The nonminor dependent's continued placement is necessary.**
7.  **The nonminor dependent's continued placement is no longer necessary.**
8.  **The nonminor dependent's current placement is appropriate.**
9.  **The nonminor dependent's current placement is not appropriate.** The county agency and the nonminor dependent must work collaboratively to locate an appropriate placement.

NONMINOR'S NAME:	CASE NUMBER:
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10.  The nonminor dependent's Transitional Independent Living Case Plan does include a plan for him or her to satisfy at least one of the criteria in Welfare and Institutions Code section 11403(b) to remain in foster care under juvenile court jurisdiction as indicated below:
- Attending high school or a high school equivalency certificate (GED) program.
  - Attending a college, a community college, or a vocational education program.
  - Attending a program or participating in an activity that will promote or help remove a barrier to employment.
  - Employed at least 80 hours per month.
  - The nonminor dependent is not able to attend a high school, a high school equivalency certificate (GED) program, a college, a community college, a vocational education program, or an employment program or activity or to work 80 hours per month due to a medical condition.
11.  The county agency  has  has not made reasonable efforts and provided assistance to help the nonminor dependent establish and maintain compliance with one of the conditions in Welfare and Institutions Code section 11403(b).
12.  The nonminor dependent  was  was not provided with the information, documents, and services as required under Welfare and Institutions Code section 391(e).
13.  The Transitional Independent Living Case Plan  was  was not developed jointly by the nonminor dependent and the county agency.
14.  For the nonminor dependent who has elected to have the Indian Child Welfare Act continue to apply, the representative from his or her tribe  was  was not consulted during the development of the nonminor dependent's Transitional Independent Living Case Plan.
15.  The nonminor dependent's Transitional Independent Living Case Plan  does  does not reflect the living situation and services consistent, in the nonminor dependent's opinion, with what he or she needs to achieve successful adulthood and set out benchmarks that indicate how both will know when successful adulthood can be achieved.
16.  The nonminor dependent's Transitional Independent Living Case Plan  does  does not include appropriate and meaningful independent living skill services that will help the youth transition from foster care to successful adulthood.
17.  The county agency  has  has not made reasonable efforts to comply with the nonminor dependent's Transitional Independent Living Case Plan, including efforts to finalize the youth's permanent plan and prepare him or her for independence.
18.  The county agency  has  has not made ongoing and intensive efforts to finalize the permanent plan.
19.  The nonminor dependent  did  did not sign and receive a copy of his or her Transitional Independent Living Case Plan.
20. a. The extent of progress made by the nonminor dependent toward meeting the Transitional Independent Living Case Plan goals has been  excellent  satisfactory  minimal.
- b.  The modifications to the Transitional Independent Living Case Plan goals needed to assist the nonminor dependent in his or her efforts to attain those goals were stated on the record.
21.  The county agency  has  has not exercised due diligence to locate an appropriate relative with whom the nonminor could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated.
22.  The county agency  has  has not made reasonable efforts to maintain relations between the nonminor dependent and individuals who are important to him or her, including efforts to establish and maintain relationships with caring and committed adults who can serve as lifelong connections.
23.  The county agency  has  has not made reasonable efforts to establish or maintain the nonminor dependent's relationship with his or her siblings who are under juvenile court jurisdiction.
24. The likely date by which it is anticipated the nonminor dependent will achieve successful adulthood is:
25.  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:
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26.  At a hearing under rule 5.555 of the California Rules of Court held on the date below, the juvenile court entered the findings and orders as recorded on the *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over a Nonminor* (form JV-367), and juvenile court jurisdiction is terminated under to those findings and orders.

27.  For nonminors placed in another planned permanent living arrangement:

a. The nonminor's desired permanency outcome is:

b. The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because:

(1)  The nonminor is 18 years of age or older.

(2)  Other:

c. The compelling reasons why other permanent plan options are not in the nonminor's best interest are:

28.  Juvenile court jurisdiction over the youth as a nonminor dependent is continued, and

a.  the youth's permanent plan is

(1)  return home

(2)  adoption

(3)  tribal customary adoption

(4)  placement with a fit and willing relative

(5)  Other (*specify*):

b.  family reunification services are continued.

c. the matter is continued for a hearing set under Welfare and Institutions Code section 366.31, and rule 5.903 of the California Rules of Court within the next six months.

29. **All prior orders not in conflict with this order remain in full force and effect.**

30.  **Other findings and orders**

a.  See attachment 30a.

b.  (*Specify*):

31.  **Additional findings and orders for nonminor dependent with case plan of continued family reunification services**

a. The agency  has  has not complied with the case plan by making reasonable efforts to create a safe home for the nonminor dependent to reside in and to complete whatever steps are necessary to finalize the permanent plan.

b. The extent of progress made toward alleviating or mitigating the causes necessitating the current out-of-home placement has been

(1)  by the father:

(2)  by the mother:

(3)  by the nonminor:

(4)  other (*specify*):

c. The likely date by which the nonminor dependent may safely reside in the family home or achieve successful adulthood is:

d. (1)  The nonminor can safely reside in the family home and may return to the family home.

(a)  The court maintains jurisdiction under Welfare and Institutions Code section 303(a) and a review hearing under Welfare and Institutions Code section 366.31 is ordered.

(b)  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of Court is ordered.

NONMINOR'S NAME:	CASE NUMBER:
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31. d. (2)  The nonminor cannot safely reside in the family home, and reunification services are continued.
- (a)  The nonminor dependent and parents or guardians are in agreement with the continuation of reunification services.
  - (b)  Continued reunification services are in the best interest of the nonminor dependent.
  - (c)  There is a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.
  - (d)  The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.
- (3)  The nonminor cannot safely reside in the family home and the reunification services are terminated (*check all that apply*).
- (a)  The nonminor dependent and parents or guardians are not in agreement with the continuation of reunification services.
  - (b)  Continued reunification services are not in the best interest of the nonminor dependent.
  - (c)  There is not a substantial probability that the nonminor dependent will be able to safely reside in the family home by the next review hearing.

32.  **Additional findings and orders for nonminor residing in the home of a parent or former legal guardian**

- a. (1)  It appears that juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing to consider termination of juvenile court jurisdiction under Welfare and Institutions Code section 391 and rule 5.555 of the California Rules of court is ordered.
- (2)  Court supervision and juvenile court jurisdiction continues to be necessary. The court maintains jurisdiction under Welfare and Institutions Code section 303(a). The matter is continued for a review hearing under Welfare and Institutions Code section 366.31 and rule 5.903 of the California Rules of Court within the next six months.
- b.  The county agency  has  has not complied with the case plan by making reasonable efforts to maintain a safe family home for the nonminor.
- c.  The county agency  has  has not complied with the nonminor's Transitional Independent Living Case Plan, including efforts to prepare the nonminor for successful adulthood.

33. **The next hearings are scheduled as follows:**

- a.  Nonminor dependent status review hearing (Welf. & Inst. Code, § 366.31; Cal. Rules of Court, rule 5.903)

Hearing date:	Time:	Dept:	Room:
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- b.  Hearing to consider termination of jurisdiction under rule 5.555 of the California Rules of Court.

Hearing date:	Time:	Dept:	Room:
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- c.  Other (*specify*):

Hearing date:	Time:	Dept:	Room:
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34. Number of pages attached: \_\_\_\_\_

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

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

CHILD'S NAME:	CASE NUMBER:
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### FINDINGS AND ORDERS AFTER SIX-MONTH PREPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:
- b.  Other (*specify*):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
6.  The child's out-of home placement is necessary.
7. a.  The child's out-of-home placement is appropriate.
- b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of-state placement:
- a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.
10.  Probation  has  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 whatever steps are necessary to finalize the permanent plan.
11.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
12.  **The child has no known Indian heritage.**

CHILD'S NAME:	CASE NUMBER:
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13.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Child	<input type="checkbox"/>				
b. <input type="checkbox"/> Mother	<input type="checkbox"/>				
c. <input type="checkbox"/> Father	<input type="checkbox"/>				
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>				
e. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>				
f. <input type="checkbox"/> Other (specify):	<input type="checkbox"/>				

14.  The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, or placed permanently with a fit and willing relative is (date):

**Case planning and visitation**

15.  **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

16. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child    mother    father    legal guardian    tribal representative  
 other:
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child    mother    father    legal guardian    tribal representative  
 other:
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.  
 child    mother    father    legal guardian    tribal representative  
 other:

17.  The court finds that the child's:

a. developmental needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met	c. physical needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met
b. mental health needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met	d. education needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	being met

18.  The additional services, assessments, and/or evaluations the child requires and the persons or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:

a.  set forth on the record.

b.  as follows:

19. a.  The following are ordered by the court to participate with the child in a counselling or education program as directed by probation:  mother    father    legal guardian    other (specify):

b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 mother    father    legal guardian    other (specify):

20.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.

a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.

b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.

21.  Visitation with the child is ordered:

a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b.  As follows (specify):

CHILD'S NAME:	CASE NUMBER:
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**Health and education**

22. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
23.  The  parents  legal guardians are  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 Welfare and Institutions Code section 739 and vested with the probation department.
24.  A limitation on the  parents  legal guardians to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
25.  The child's school placement has changed since the dispositional hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days.
- b.  The child is  enrolled in  attending school.

**Parentage**

26. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

27. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**
28. **All prior orders not in conflict with this order remain in full force and effect.**
29.  Other findings and orders:
- a.  See attached.
- b.  (*Specify*):
30.  The date the child entered foster care is (*specify*):
31.  **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

32.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.
33.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.
34. Number of pages attached:

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

CHILD'S NAME:	CASE NUMBER:
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**FINDINGS AND ORDERS AFTER PERMANENCY HEARING—DELINQUENCY**

**12 MONTH**                     
  **18 MONTH** *(only if reunification services extended at 12 months)*

**1. The court has read and considered and admits into evidence:**

- a.  Report of probation dated:
- b.  Other *(specify)*:

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

- 2. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
- 3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

- 4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

- 5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
- 6.  The child's out-of home placement is necessary.
- 7. a.  The child's out-of-home placement is appropriate.
- b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
- 8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
- 9.  The child is placed outside the state of California and that out-of-state placement:
  - a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
  - b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by probation on the progress made toward finding an appropriate placement for the child.
- 10.  Probation  has  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 whatever steps are necessary to finalize the permanent plan.
  - a.  For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:
- 11.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

CHILD'S NAME:	CASE NUMBER:
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12.  **The child has no known Indian heritage.**

13.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:

	None	Minimal	Adequate	Substantial	Excellent
a. <input type="checkbox"/> Child	<input type="checkbox"/>				
b. <input type="checkbox"/> Mother	<input type="checkbox"/>				
c. <input type="checkbox"/> Father	<input type="checkbox"/>				
d. <input type="checkbox"/> Legal guardian	<input type="checkbox"/>				
e. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>				
f. <input type="checkbox"/> Other ( <i>specify</i> ):	<input type="checkbox"/>				

14. a.  Reunification Services are continued (Welf. & Inst. Code, § 727.3 (b)(2)).

(1)  There is a substantial probability that the child may be returned to the  mother  father  legal guardian by the date set for the 18-month permanency hearing because the  mother  father  legal guardian and the child have demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are continued to the  mother  father  legal guardian.

(2)  The probation department has not provided reasonable services to the  mother  father  legal guardian. The services provided have been inadequate in that:

The probation department is ordered to provide reasonable reunification services to the  mother  father  legal guardian.

b.  Reunification Services are terminated.

(1)  The probation department has provided services and opportunities but the  mother  father  legal guardian has not participated regularly and has not demonstrated the capacity and ability to complete the objectives of the case plan. Reunification services are terminated.

(2)  The probation department has provided services and opportunities but there is not a substantial probability that the child may be returned to the  mother  father  legal guardian by the date set for the 18-month review. Reunification services are terminated.

(3)  **At 18-month review:** Reunification services are terminated because it has been 18 months since the date the minor was originally removed from the physical custody of his or her parent or legal guardian.

(4)  The probation department  has  has not exercised due diligence to locate an appropriate relative with whom (*name*)  could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated. (Fam. Code, § 7950)

15. a.  **The following is appropriate and ordered as the permanent plan:**

(1)  The child is returned home immediately.

(2)  Continuation of reunification services and setting of a further permanency hearing. If the child is not returned home at the next permanency hearing, that could result in termination of parental rights and the adoption of the child.

(3)  Adoption. A hearing under Welfare and Institution Code Section 727.31 is scheduled for  and an adoption assessment report is ordered.

(4)  Legal guardianship.

b.  The court finds by clear and convincing evidence that (*name of child*)  is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:

(1)  Permanent placement with (*name*)  a fit and willing relative.

(2)  Placement in foster care with a permanent plan of (*specify*) return home, adoption, or placement with a fit and willing relative.

(3)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of:

- return home  legal guardianship
- emancipation  placement with a relative
- other (*specify*):

CHILD'S NAME:	CASE NUMBER:
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- 16. a.  The likely date by which the permanent plan will be achieved is: \_\_\_\_\_
- b.  The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is \_\_\_\_\_ . (Use this finding only when the court continues reunification services under item 14a.)
- c.  The court finds that the barriers to achieving the child's permanent plan are *(describe)*:  
 \_\_\_\_\_

**For children 16 years of age or older placed in another planned permanent living arrangement:**

- 17. a.  The court asked the child where he or she wants to live and the child provided the following information *(describe)*:  
 \_\_\_\_\_
- b.  The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*:  
 \_\_\_\_\_
- c.  The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe)*:  
 \_\_\_\_\_

**Case planning and visitation**

- 18.  **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.
- 19. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child     mother     father     legal guardian     tribal representative  
 other:
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child     mother     father     legal guardian     tribal representative  
 other:
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.  
 child     mother     father     legal guardian     tribal representative  
 other:
- 20.  The court finds that the child's:
  - a. developmental needs     are     are not    being met
  - b. mental health needs     are     are not    being met
  - c. physical needs     are     are not    being met
  - d. education needs     are     are not    being met
- 21.  The additional services, assessments, and/or evaluations the child requires, and the person or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations, are:
  - a.  set forth on the record.
  - b.  as follows:
- 22. a.  The following are ordered by the court to participate with the child in a counselling or education program as directed by probation:  mother     father     legal guardian     other *(specify)*:
- b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 mother     father     legal guardian     other *(specify)*:

CHILD'S NAME:	CASE NUMBER:
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23.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
- b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children for the following reasons (*state reasons*):

No visitation is ordered.

24.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  As follows (*specify*):

**Health and education**

25. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.

26.  The  parents  legal guardians are  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 Welfare and Institutions Code section 739 and vested with the probation department.

27.  A limitation on the  parents  legal guardians to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).

28.  The child's school placement has changed since the last hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
- b.  The child is  enrolled in  attending (*specify school*):

**Parentage**

29. a.  The court inquired of  the mother  others (*names and relationships*):

as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.

- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

30. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

31. **All prior orders not in conflict with this order remain in full force and effect.**

32.  Other findings and orders:

- a.  See attached.
- b.  (*Specify*):

33.  The date the child entered foster care is (*specify*):

CHILD'S NAME:	CASE NUMBER:
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34.  **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

36.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

36.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

37. Number of pages attached:

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

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

CHILD'S NAME:	CASE NUMBER:
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### FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:
- b.  Other (*specify*):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.
- b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.
- b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. Probation has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  Continued out-of-home care is in the best interest of the child. Reunification services are terminated.
6.  The child's out-of home placement is necessary.
7. a.  The child's out-of -home placement is appropriate.
- b.  The child's current placement is not appropriate. This hearing is continued for a report by probation on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of-state placement:
- a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.
- b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.
10.  The probation department  has  has not exercised due diligence to locate an appropriate relative with whom  (name) could be placed. Each relative whose name has been submitted to the department  has  has not been evaluated. (Fam. Code, § 7950)
11.  Probation  has  has not complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.
- a.  For children 16 years of age or older placed in another planned permanent living arrangement, the court finds that probation  has  has not made the following ongoing and intensive efforts to return the child to a safe home or finalize the permanent plan:

CHILD'S NAME:	CASE NUMBER:
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12.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.

13.  **The child has no known Indian heritage.**

14. a.  The following is appropriate and ordered as the permanent plan:

- (1)  The child is returned home immediately.
- (2)  Adoption. A hearing under Welfare and Institutions Code section 727.31 is scheduled for \_\_\_\_\_ and an adoption assessment report is ordered.
- (3)  Legal guardianship.

b.  The court finds by clear and convincing evidence that *(name of child)* \_\_\_\_\_ is not a proper subject for adoption and there is no one willing to accept legal guardianship. The permanent plan is:

- (1)  Permanent placement with *(name)* \_\_\_\_\_ a fit and willing relative.
- (2)  Placement in foster care with a permanent plan of return home, adoption, or placement with a fit and willing relative.
- (3)  The child is 16 years of age or older, there is a compelling reason that no other preferred permanent plan is in the child's best interest, and the child is ordered placed in another planned permanent living arrangement with a goal of return home, legal guardianship, placement with a relative, or emancipation.

15.  The likely date by which the permanent plan will be achieved is: \_\_\_\_\_

16.  The court finds that the barriers to achieving the child's permanent plan are *(describe)*:  
 \_\_\_\_\_

17.  **For children 16 years of age or older placed in another planned permanent living arrangement:**

a.  The court asked the child where he or she wants to live and the child provided the following information *(describe)*:  
 \_\_\_\_\_

b.  The court has considered the evidence before it and finds that another planned permanent living arrangement is the best permanent plan because *(describe)*:  
 \_\_\_\_\_

c.  The compelling reasons why the other permanent plan options are not in the child's best interest are *(describe)*:  
 \_\_\_\_\_

**Case planning and visitation**

18.  **The child is 14 years of age or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to successful adulthood.

- 19. a.  The child was actively involved in the development of his or her case plan, including the plan for permanent placement.
- b.  The child was NOT actively involved in the development of his or her case plan, including the plan for permanent placement.
  - (1)  Probation is ordered to involve the child and submit an updated case plan within 30 days.
  - (2)  Probation is NOT required to involve the child because the child is unable, unavailable, or unwilling to participate.

20.  The court finds that the child's:

a. developmental needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	c. physical needs	<input type="checkbox"/> are	<input type="checkbox"/> are not
b. mental health needs	<input type="checkbox"/> are	<input type="checkbox"/> are not	d. education needs	<input type="checkbox"/> are	<input type="checkbox"/> are not

being met      being met

CHILD'S NAME:	CASE NUMBER:
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21.  The additional services, assessments, and/or evaluations the child requires and the persons or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:
- set forth on the record.
  - as follows:
22.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
  - The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.
23.  Visitation with the child is ordered:
- as set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
  - as follows (*specify*):

### Health and education

24. The child  does  does not have an order authorizing psychotropic medication. The next hearing to review the psychotropic medication order is on \_\_\_\_\_.
25.  The  parents  legal guardians are  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 Welfare and Institutions Code section 739 and vested with the probation department.
26.  A limitation on the  parents  legal guardians to make educational decisions for the child
- is NOT necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
  - is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
27.  The child's school placement has changed since the last review hearing.
- The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.
  - The child is  enrolled in  attending school.

### Parentage

28. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
- alleged father (*name*):
  - alleged father (*name*):

### Advisement

29. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**
30. **All prior orders not in conflict with this order remain in full force and effect.**

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

31.  Other findings and orders:

- a.  See attached.
- b.  (Specify):

32.  The date the child entered foster care is (specify):

33.  **The next hearing will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

34.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

35.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

36. Number of pages attached:

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

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

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Juvenile Law: Court Appointed Special Advocates (CASA)

*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: December 15, 2016

Project description from annual agenda: Expands the Court Appointed Special Advocate program to allow appointment of CASAs for any minor dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court.

*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: Court Appointed Special Advocate	Please review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.655; approve form JV-474	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti, 415-865-7598 <a href="mailto:nicole.giacinti@jud.ca.gov">nicole.giacinti@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 recommends amending rule 5.655 (Program requirements for Court Appointed Special Advocate programs) to clarify the relationship between Court Appointed Special Advocate (CASA) programs and the court, and to comply with Assembly Bill 424 (Gaines; Stats 2015, ch. 71) and Assembly Bill 1712 (Beall; Stats 2012, ch. 846), which amended Welfare and Institutions Code sections 101 and 102 to authorize appointment of CASAs for delinquent youth and nonminor dependents. The committee also recommends approval of new form JV-474, “Nonminor Dependent—Consent to Copy and Inspect Court File”

### Background

Rule 5.655 was originally adopted as rule 1424 on July 1, 1994. The rule establishes the CASA program and presents the policies and procedures that the CASA program must follow, as well as the requirements one must complete to volunteer as a CASA. The rule was renumbered effective January 1, 2007, and has been amended seven times, most recently in 2016. All of the amendments effect relatively minor technical changes corresponding to legislative updates or clarifications of the business aspect of the CASA programs. Since 2010, two pieces of legislation affecting the CASA rule have been enacted. In 2012, the Legislature passed AB 1712, which amended Welfare and Institutions Code sections 101 and 102 to extend the availability of the CASA program to nonminor dependents. Likewise, during the most recent legislative cycle, 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.*

Legislature passed AB 424, which again amended sections 101 and 102; this time to extend the CASA program to delinquent children.

## **The Proposal**

To ensure conformance with the statutory changes implemented by AB 424 and AB 1712, the Family and Juvenile Law Advisory Committee proposes implementing the amendments to rule 5.655 listed below. The committee also recommends taking this opportunity to clarify the relationship between the court and CASA programs. To do so, the committee recommends amending the rule to establish procedures that will ensure that the relationship between the court and CASA program is clearly defined.

### **Amendments to rule 5.655 related to the role of court and CASA program**

- Amend subdivision (a) to clarify that the local court is the entity that designates a CASA program and to include the definition of a CASA program that was previously contained section (b).
- Delete the references to the creation of a policies and procedures manual in section (a). (Note that there is also a reference to a policies and procedures manual in the definitions subdivision, (b), that the committee proposes repealing.) Instead, revise subdivision (a) to state that CASA programs must follow guidelines established by the Judicial Council.
- Repeal subdivision (b), “Definitions.” The terms that are defined in that section are defined in other rules, and the remainder of the language in that section consists of statements, not definitions.
- Reletter the rule so that the subdivisions describing the process of becoming a CASA program, currently lettered (k)—(m), come at the beginning of the rule as (b)—(d). Reletter the subdivisions of the rule currently lettered (c)—(j) as (e)—(l).
- Amend current subdivision (k), which is proposed subdivision (b), “CASA Program administration and management,” to state that the relationship between the court and the CASA program must be clearly defined in a memorandum of understanding (MOU).
- Include in paragraph (1)(B) of proposed subdivision (b) a statement that a CASA program may serve more than one court as long as it executes MOUs with each court.
- Amend current subdivision (k)(2), which is proposed subdivision (b)(2)(B), to define the role of an advisory council.
- Move the definition of “CASA volunteer” from “Definitions,” which is proposed to be repealed, to proposed subdivision (e), “Recruiting, screening, and selecting CASA volunteers.”
- Amend current subdivision (c), which is proposed subdivision (e), to delete the requirement that the presiding juvenile judge personally interview each CASA volunteer: that requirement may cause a conflict of interest.

### **Amendments to rule 5.655 related to delinquent children and nonminor dependents**

- Include nonminor dependents in proposed subdivision (a), “General Provisions,” among the population of young people served by CASA volunteers. Further add the term

*nonminor dependent* to the following proposed subdivisions: (a)(2),(d)(1) and (d)(4), (e)(1), (g), (i)(1) and (i)(3), (j); (k)(1)(A)(i)–(ii).

- Include in paragraph (1) of proposed subdivision (f), “Initial training of CASA volunteers,” among the optional training requirements for CASA volunteers, the training topics stated in rule 5.664.
- Amend current subdivision (i)(1)(A)(ii)—which is paragraph (1)(A)(ii) of proposed subdivision (k), “Oversight, support, and supervision, of CASA volunteers,” which discusses who should receive information about the roles and responsibilities of the CASA volunteer—to include the nonminor dependent.
- Add in proposed subdivision (d), “Confidentiality,” a new subparagraph (4) that clarifies that the nonminor dependent must consent to the CASA volunteer’s accessing his or her court file. Reletter current paragraph (4) to paragraph (5).

#### **Approve form JV-474**

- Approve proposed optional form JV-474, “Nonminor Dependent—Consent to Copy and Inspect Court File.” Welfare and Institutions Code section 107(b) requires that the CASA volunteer obtain consent from the nonminor dependent before reviewing the nonminor dependent’s court file.
- Optional form JV-474 is directed at the nonminor dependent. The form states that the nonminor dependent does not need to consent to release of his or her file and lists the records that may be included in the file for inspection by the CASA volunteer if the nonminor dependent gives consent.
- Adopting this optional form will relieve CASA programs of the need to create a consent form and will encourage compliance with the statutory mandate that consent be provided.

#### **Effective Date**

Recognizing that the proposal will result in a significant procedural change, namely the MOU between the court and the CASA program, the committee recommends a delayed effective date of January 1, 2019 for the amendments of rule 5.655 and the approval of form JV-474.

#### **Alternatives Considered**

The Family and Juvenile Law Advisory Committee considered addressing legislative changes to the CASA program through technical assistance; however, CASA volunteers and CASA programs read this rule, so it is important that the rule is as legally accurate and comprehensive as possible.

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

This proposal will result in minimal printing costs as requests for CASA volunteers for nonminor dependent’s rise and may result in a modest increase in employee labor, related to filing additional documents.

## 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?
- Do current best practices related to background checks require amending proposed subdivision (e)(3)(B)?
- Should CASA programs that serve more than one county be required to maintain advisory boards in each county they serve?
- Rule 5.502 defines children as anyone under age 18. With the exception of section (a), which states that CASA programs may serve dependent and delinquent children and nonminor dependents, rule 5.655 uses the words “child” and “children” to refer to both dependent and delinquent children. Should the rule include a definition of “child/children” to avoid confusion about the children CASA programs are authorized to serve?
- When defining the population of children a CASA program may serve, should the rule explicitly state that population includes nonminors who have transitioned from delinquency to dependency under Welfare and Institutions Code section 450?
- A delayed effective date of January 1, 2019 is proposed for this rule and form. Is a delayed effective date necessary?

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 15 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

1. Proposed amended Cal. Rules of Court, rule 5.655, at page
2. Proposed optional form JV-474, at page

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

**Title 5. Family and Juvenile Rules**

**Chapter 11. Advocate for Parties**

**Rule 5.655. Program requirements for Court Appointed Special Advocate programs**

**(a) General provisions**

- (1) A Court Appointed Special Advocate (CASA) program is a child advocacy program that recruits, screens, selects, trains, supervises, and supports lay volunteers for appointment by the court to help define the best interest of children and nonminor dependents who have been made dependents of the court under Welfare and Institutions Code section 300 or wards of the court under Welfare and Institutions Code section 602.
- (2) To be authorized to serve children and nonminor dependents in a county, the CASA program must be designated by the presiding judge of the juvenile court.
- (3) A CASA program must comply with this rule and other procedures and guidelines, as set by the Judicial Council, to be eligible to receive Judicial Council funding. The Judicial Council may consider compliance with the guidelines delineated in the *CASA Program Policies and Procedures Manual* when determining eligibility for and amount of program funding.

**(b) Definitions**

- ~~(1) A Casa program is the local child advocate program that adheres to this rule; has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers for appointment by the court to help define the best interest of children in juvenile court dependency and wardship proceedings; and has completed one development grant year and one “start-up” year.~~
- ~~(2) Judicial Council staff may create a *CASA Program Policies and Procedures Manual* containing recommended program policies and procedures. If Judicial Council staff create a manual, it will be developed in collaboration with the California CASA Association and California CASA program directors. The protocols will address program and fiscal management, and the recruitment, screening, selection, training, and supervision of lay volunteers.~~
- ~~(3) A CASA volunteer is a person who has been recruited, screened, selected, and trained, who is being supervised and supported by a local CASA program, and who has been appointed by the juvenile court as a sworn officer~~

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1 ~~of the court to help define the best interest of a child or children in juvenile~~  
2 ~~court dependency and wardship proceedings.~~

3  
4 ~~(4) A “dependency proceeding” is a legal action brought on behalf of an~~  
5 ~~allegedly abused, neglected, or abandoned child under section 300 et seq. The~~  
6 ~~action is designed to protect children, preserve and reunify families, and find~~  
7 ~~permanent homes for children who cannot be returned to their parents.~~  
8 ~~Dependency proceedings include actions to appoint a legal guardian,~~  
9 ~~terminate parental rights, and facilitate adoptions for dependent children of~~  
10 ~~the juvenile court.~~

11  
12 ~~(5) A “wardship proceeding” is a legal action involving a child under the age of~~  
13 ~~18 years who is alleged to be:~~

14  
15 ~~(A) A person described under section 601 (who is beyond parental control~~  
16 ~~or habitually disobedient or truant); or~~

17  
18 ~~(B) A person described under section 602 (who has violated any state or~~  
19 ~~federal law or any city or county ordinance).~~

20  
21 **(b) CASA program administration and management**

22  
23 (1) The court’s designation of the CASA program must take the form of a  
24 memorandum of understanding (MOU) between the CASA program and the  
25 designating court.

26  
27 (A) The MOU must state that the relationship between the CASA program  
28 and the designating court can be terminated for convenience by either the  
29 CASA program or the designating court.

30  
31 (B) A CASA program may serve children in more than one court if the  
32 program executes an MOU with each court.

33  
34 (2) A CASA program must function as a nonprofit organization or under the  
35 auspices of a public agency or nonprofit organization and must adopt and  
36 adhere to a written plan for program governance and evaluation. The plan must  
37 include the following, as applicable:

38  
39 (A) Articles of incorporation, a board of directors, and bylaws that specify a  
40 clear administrative relationship with the parent organization and clearly  
41 delineated delegations of authority and accountability.

42  
43 (B) A clear statement of the purpose or mission of the CASA program and  
44 express goals and objectives to further that purpose. Where the CASA  
45 program is not an independent organization, but instead functions under  
46 the auspices of a public agency or a nonprofit organization, an active

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1 advisory council must be established. The role of the advisory council for  
2 CASA programs functioning under the auspices of a public agency or a  
3 nonprofit organization includes but is not limited to developing and  
4 approving policies for CASA, developing the CASA program’s budget,  
5 promoting a collaborative relationship with the umbrella organization,  
6 monitoring and evaluating program operations, and developing and  
7 implementing fundraising activities to benefit the CASA program. The  
8 board of directors for the nonprofit organization or management of the  
9 public agency will function as the governing body for the CASA  
10 program, with guidance from the advisory council.

11  
12 (C) A procedure for the recruitment, selection, hiring, and evaluation of an  
13 executive director for the CASA program.

14  
15 (D) An administrative manual containing personnel policies, record-keeping  
16 practices, and data collection practices.

17  
18 (E) Local juvenile court rules developed in consultation with the presiding  
19 judge of the juvenile court or a designee, as specified in section 100. One  
20 local rule must specify when CASA reports are to be submitted to the  
21 court, who is entitled to receive a copy of the report, and who will copy  
22 and distribute the report. This rule must also specify that the CASA court  
23 report must be distributed to the persons entitled to receive it at least two  
24 court days before the hearing for which the report was prepared.

25  
26 (3) No CASA program may function under the auspices of a probation department  
27 or department of social services. CASA programs may receive funds from  
28 probation departments, local child welfare agencies, and the California  
29 Department of Social Services if:

30  
31 (A) The CASA program and the contributing agency develop an MOU  
32 stating that the funds will be used only for general operating expenses  
33 as determined by the receiving CASA program, and the contributing  
34 agency will not oversee or monitor the funds;

35  
36 (B) A procedure resolving any conflict between the CASA program and  
37 contributing agency is implemented so that conflict between the two  
38 agencies does not affect funding or the CASA program’s ability to  
39 retain an independent evaluation separate from that of the contributing  
40 agency’s; and

41  
42 (C) Any MOU between a CASA program and the contributing agency is  
43 submitted to and approved by Judicial Council staff.

44  
45 ~~(e) — Recruiting, screening, and selecting CASA volunteers~~  
46

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1       ~~(1) A CASA program must adopt and adhere to a written plan for the recruitment of~~  
2       ~~potential CASA volunteers. The program staff, in its recruitment effort, must~~  
3       ~~address the demographics of the jurisdiction by making all reasonable efforts to~~  
4       ~~ensure that individuals representing all racial, ethnic, linguistic, and economic~~  
5       ~~sectors of the community are recruited and made available for appointment as~~  
6       ~~CASA volunteers.~~

7  
8       ~~(2) A CASA program must adopt and adhere to the following minimum written~~  
9       ~~procedures for screening potential CASA volunteers under section 102(e):~~

10  
11       ~~(A) A written application that generates minimum identifying data; information~~  
12       ~~regarding the applicant's education, training, and experience; minimum age~~  
13       ~~requirements; and current and past employment.~~

14  
15       ~~(B) Notice to the applicant that a formal security check will be made, including~~  
16       ~~inquiries through appropriate law enforcement agencies, regarding any~~  
17       ~~criminal record, driving record, or other record of conduct that would~~  
18       ~~disqualify the applicant from service as a CASA volunteer. The security~~  
19       ~~check must include fingerprinting. Refusal to consent to a formal security~~  
20       ~~check is grounds for rejecting an applicant.~~

21  
22       ~~(C) A minimum of three completed references regarding the character,~~  
23       ~~competence, and reliability of the applicant and his or her suitability for~~  
24       ~~assuming the role of a CASA volunteer.~~

25  
26       ~~(D) A personal interview or interviews by a person or persons approved by the~~  
27       ~~presiding juvenile court judge or designee, to probe the essential areas of~~  
28       ~~concern with respect to the qualities of an effective CASA volunteer. A~~  
29       ~~written, confidential record of the interview and the interviewer's~~  
30       ~~assessments and observations must be made and retained in the advocate's~~  
31       ~~file.~~

32  
33       ~~(3) If a CASA program allows its volunteers to transport children, the program must~~  
34       ~~ensure that each volunteer transporting children:~~

35  
36       ~~(A) Possesses a valid and current driver's license;~~

37  
38       ~~(B) Possesses personal automobile insurance that meets the minimum state~~  
39       ~~personal automobile insurance requirements;~~

40  
41       ~~(C) Obtains permission from the child's guardian or custodial agency; and~~

42  
43       ~~(D) Provides the CASA program with a Department of Motor Vehicles driving~~  
44       ~~record report annually.~~

45

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1 ~~(4) A CASA program must adopt a written preliminary procedure for selecting~~  
2 ~~CASA candidates to enter the CASA training program. The selection procedure~~  
3 ~~must state that any applicant found to have been convicted of or to have current~~  
4 ~~charges pending for a felony or misdemeanor involving a sex offense, child abuse,~~  
5 ~~or child neglect must not be accepted as a CASA volunteer. This policy must be~~  
6 ~~stated on the volunteer application form.~~

7  
8 ~~(5) An adult otherwise qualified to act as a CASA must not be discriminated against~~  
9 ~~based on marital status, socioeconomic factors, race, national origin, ethnic group~~  
10 ~~identification, religion, age, sex, sexual orientation, color, or disability or because~~  
11 ~~of any other characteristic listed or defined in Government Code section 11135 or~~  
12 ~~Welfare and Institutions Code section 103.~~

13  
14 **(c) Finance, facility, and risk management**

15  
16 (1) A CASA program must adopt a written plan for fiscal control. The fiscal plan  
17 must include an annual audit, conducted by a qualified professional, that is  
18 consistent with generally accepted accounting principles and the audit  
19 protocols in the program's MOU with the Judicial Council.

20  
21 (2) The fiscal plan must include a written budget with projections that guide the  
22 management of financial resources and a strategy for obtaining necessary  
23 funding for program operations.

24  
25 (3) When the program has accounting oversight, it must adhere to written  
26 operational procedures in regard to accounting control.

27  
28 (4) The CASA program's board of directors must set policies for and exercise  
29 control over fundraising activities carried out by its employees and  
30 volunteers.

31  
32 (5) The CASA program must have the following insurance coverage for its staff  
33 and volunteers:

34  
35 (A) General liability insurance with liability limits of not less than  
36 \$1 million (\$1,000,000) for each person per occurrence/aggregate for  
37 bodily injury and not less than \$1 million (\$1,000,000) per  
38 occurrence/aggregate for property damage;

39  
40 (B) Nonowned automobile liability insurance and hired vehicle coverage  
41 with liability limits of not less than \$1 million (\$1,000,000) combined  
42 single limit per occurrence and in the aggregate;

43  
44 (C) Automobile liability insurance meeting the minimum state automobile  
45 liability insurance requirements, if the program owns a vehicle; and  
46

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1           (D) Workers' compensation insurance with a minimum limit of \$500,000.

2  
3           (6) The CASA program must require staff, volunteers, and members of the  
4 governing body, when applicable, to immediately notify the CASA program  
5 of any criminal charges against themselves.

6  
7           (7) The nonprofit CASA program must plan for the disposition of property and  
8 confidential records in the event of its dissolution.

9  
10 **(d) Initial training of CASA volunteers (§ 102(d))**

11  
12 ~~A CASA program must adopt and adhere to a written plan for the initial training of~~  
13 ~~CASA volunteers.~~

- 14  
15 ~~(1) The initial training curriculum must include at least 30 hours of formal~~  
16 ~~instruction. This curriculum must include mandatory training topics as listed in~~  
17 ~~section 102(d). The curriculum may also include additional appropriate topics.~~  
18 ~~(2) The final selection process is contingent on the successful completion of the~~  
19 ~~initial training program, as determined by the presiding judge of the juvenile~~  
20 ~~court or designee.~~

21  
22 **(d) Confidentiality**

23  
24 The presiding juvenile court judge and the CASA program director must adopt a  
25 written plan governing confidentiality of case information, case records, and  
26 personnel records. The plan must be included in the MOU or a local rule. The  
27 written plan must include the following provisions:

- 28  
29 (1) All information concerning children and families, including nonminor  
30 dependents, in the juvenile court process is confidential. Volunteers must not  
31 give case information to anyone other than the court, the parties and their  
32 attorneys, and CASA staff.  
33  
34 (2) CASA volunteers are required by law (Pen. Code, § 11166 et seq.) to report  
35 any reasonable suspicion that a child is a victim of child abuse or serious  
36 neglect as described by Penal Code section 273a.  
37  
38 (3) The child's original case file must be maintained in the CASA office by a  
39 custodian of records and must remain there. Copies of documents needed by  
40 a volunteer must be restricted to those actually needed to conduct necessary  
41 business outside of the office. No one may have access to the child's original  
42 case file except on the approval of the CASA program director or presiding  
43 judge of the juvenile court. Controls must be in place to ensure that records  
44 can be located at any time. The office must establish a written procedure for  
45 the maintenance of case files.  
46

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1           (4) If the nonminor dependent provides consent for the CASA volunteer to  
2           obtain his or her case file, the procedures stated in paragraph (3) related to  
3           maintenance of the case file must be followed. The nonminor dependent's  
4           consent must be obtained before anyone else may be allowed to access his or  
5           her file.

6  
7           (5) The volunteer's personnel file is confidential. No one may have access to the  
8           personnel file except the volunteer, the CASA program director or a  
9           designee, or the presiding judge of the juvenile court.

10  
11       ~~(e) Oath~~

12  
13           ~~At the completion of training, and before assignment to any child's case, the CASA~~  
14           ~~volunteer must take a court-administered oath describing the duties and~~  
15           ~~responsibilities of the advocate under section 103(f). The CASA volunteer must~~  
16           ~~also sign a written affirmation of that oath. The signed affirmation must be~~  
17           ~~retained in the volunteer's file.~~

18  
19       (e) **Recruiting, screening, and selecting CASA volunteers**

20  
21           (1) A CASA volunteer is a person who has been recruited, screened, selected,  
22           and trained; is being supervised and supported by a local CASA program;  
23           and has been appointed by the juvenile court as a sworn officer of the court to  
24           help define the best interest of children or nonminor dependents in juvenile  
25           court dependency and wardship proceedings.

26  
27           (2) A CASA program must adopt and adhere to a written plan for the recruitment  
28           of potential CASA volunteers. The program staff, in its recruitment effort,  
29           must address the demographics of the jurisdiction by making all reasonable  
30           efforts to ensure that individuals representing all racial, ethnic, linguistic, and  
31           economic sectors of the community are recruited and made available for  
32           appointment as CASA volunteers.

33  
34           (3) A CASA program must adopt and adhere to the following minimum written  
35           procedures for screening potential CASA volunteers under section 102(e):

36  
37           (A) A written application that generates minimum identifying data;  
38           information regarding the applicant's education, training, and  
39           experience; minimum age requirements; and current and past  
40           employment.

41  
42           (B) Notice to the applicant that a formal security check will be made,  
43           including inquiries through appropriate law enforcement agencies,  
44           regarding any criminal record, driving record, or other record of  
45           conduct that would disqualify the applicant from service as a CASA

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1                   volunteer. The security check must include fingerprinting. Refusal to  
2                   consent to a formal security check is grounds for rejecting an applicant.

3  
4                   (C) A minimum of three completed references regarding the character,  
5                   competence, and reliability of the applicant and his or her suitability for  
6                   assuming the role of a CASA volunteer.

7  
8                   (4) If a CASA program allows its volunteers to transport children, the program  
9                   must ensure that each volunteer transporting children:

10  
11                   (A) Possesses a valid and current driver’s license;

12  
13                   (B) Possesses personal automobile insurance that meets the minimum state  
14                   personal automobile insurance requirements;

15  
16                   (C) Obtains permission from the child’s guardian or custodial agency; and

17  
18                   (D) Provides the CASA program with a Department of Motor Vehicles  
19                   driving record report annually.

20  
21                   (5) A CASA program must adopt a written preliminary procedure for selecting  
22                   CASA candidates to enter the CASA training program. The selection  
23                   procedure must state that any applicant found to have been convicted of or to  
24                   have current charges pending for a felony or misdemeanor involving a sex  
25                   offense, child abuse, or child neglect must not be accepted as a CASA  
26                   volunteer. This policy must be stated on the volunteer application form.

27  
28                   (6) An adult otherwise qualified to act as a CASA must not be discriminated  
29                   against based on marital status, socioeconomic factors, race, national origin,  
30                   ethnic group identification, religion, age, sex, sexual orientation, color, or  
31                   disability or because of any other characteristic listed or defined in  
32                   Government Code section 11135 or Welfare and Institutions Code section  
33                   103.

34  
35                   **(f) — Duties and responsibilities**

36  
37                   ~~CASA volunteers serve at the discretion of the court having jurisdiction over the~~  
38                   ~~proceeding in which the volunteer has been appointed. A CASA volunteer is an~~  
39                   ~~officer of the court and is bound by all court rules under section 103(e). A CASA~~  
40                   ~~program must develop and adopt a written description of duties and~~  
41                   ~~responsibilities, consistent with local court rules.~~

42  
43                   **(f) Initial training of CASA volunteers (§ 102(d))**

44  
45                   A CASA program must adopt and adhere to a written plan for the initial training of  
46                   CASA volunteers.

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1  
2       (1) The initial training curriculum must include at least 30 hours of formal  
3 instruction. This curriculum must include mandatory training topics as listed  
4 in section 102(d). The curriculum may also include additional appropriate  
5 topics, such as those stated in California Rules of Court, rule 5.664.

6  
7       (2) The final selection process is contingent on the successful completion of the  
8 initial training program, as determined by the presiding judge of the juvenile  
9 court or designee.

10  
11 **(g) Prohibited activities**

12  
13 ~~A CASA program must develop and adopt a written description of activities that~~  
14 ~~are prohibited for CASA volunteers. The specified prohibited activities must~~  
15 ~~include:~~

16 ~~(1) Taking a child to the CASA volunteer's home;~~

17 ~~(2) Giving legal advice or therapeutic counseling;~~

18 ~~(3) Giving money or expensive gifts to the child or family;~~

19 ~~(4) Being related to any parties involved in a case or being employed in a~~  
20 ~~position and/or agency that might result in a conflict of interest; and~~

21 ~~(5) Any other activities prohibited by the local juvenile court.~~

22  
23 **(g) Oath**

24  
25 At the completion of training, and before assignment to any child or nonminor  
26 dependent's case, the CASA volunteer must take a court-administered oath  
27 describing the duties and responsibilities of the advocate under section 103(f). The  
28 CASA volunteer must also sign a written affirmation of that oath. The signed  
29 affirmation must be retained in the volunteer's file.

30  
31 **(h) The appointment of CASA volunteers**

32  
33 ~~The CASA program director must develop, with the approval of the presiding~~  
34 ~~juvenile court judge, a written procedure for the selection of cases and the~~  
35 ~~appointment of CASA volunteers for children in juvenile court proceedings.~~

36  
37 **(h) Duties and responsibilities**

38  
39 CASA volunteers serve at the discretion of the court having jurisdiction over the  
40 proceeding in which the volunteer has been appointed. A CASA volunteer is an  
41 officer of the court and is bound by all court rules under section 103(e). A CASA  
42 program must develop and adopt a written description of duties and  
43 responsibilities, consistent with local court rules.

44  
45 **(i) Oversight, support, and supervision of CASA volunteers**

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1 ~~A CASA program must adopt and adhere to a written plan, approved by the~~  
2 ~~presiding juvenile court judge, for the oversight, support, and supervision of CASA~~  
3 ~~volunteers in the performance of their duties. The plan must:~~

4  
5 (1) ~~Include a grievance procedure that covers grievances by any person against a~~  
6 ~~volunteer or CASA program staff and grievances by a volunteer against a~~  
7 ~~CASA program or program staff. The grievance procedure must:~~

8 (A) ~~Be incorporated into a document that contains a description of the roles~~  
9 ~~and responsibilities of CASA volunteers. This document must be~~  
10 ~~provided:~~

11  
12 (i) ~~When a copy of the court order that appointed the CASA~~  
13 ~~volunteer is provided to any adult involved with the child's case,~~  
14 ~~including but not limited to, teachers, foster parents, therapists,~~  
15 ~~and health care workers; and~~

16  
17 ~~(ii) To any person, including a volunteer, who has a grievance~~  
18 ~~against a volunteer or a CASA program employee.~~

19  
20 (B) ~~Include a provision that documentation of any grievance filed by or~~  
21 ~~against a volunteer must be retained in the volunteer's personnel file.~~

22  
23 (2) ~~Include a provision for the ongoing training and continuing education of~~  
24 ~~CASA volunteers. Ongoing training opportunities must be provided at least~~  
25 ~~monthly under section 103(a). CASA volunteers must participate in a~~  
26 ~~minimum of 12 hours of continuing education in each year of service.~~

27  
28 **(i) Prohibited activities**

29  
30 A CASA program must develop and adopt a written description of activities that  
31 are prohibited for CASA volunteers. The specified prohibited activities must  
32 include:

33  
34 (1) Taking a child or nonminor dependent to the CASA volunteer's home;

35  
36 (2) Giving legal advice or therapeutic counseling;

37  
38 (3) Giving money or expensive gifts to the child, nonminor dependent, or family  
39 of the child or nonminor dependent;

40  
41 (4) Being related to any parties involved in a case or being employed in a  
42 position and/or agency that might result in a conflict of interest; and

43  
44 (5) Any other activities prohibited by the local juvenile court.

45  
46 ~~(j) Removal, resignation, and termination of a CASA volunteer~~

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1  
2 The CASA program must adopt a written plan for the removal, resignation, or  
3 involuntary termination of a CASA volunteer, including the following provisions:  
4

5 ~~(1) A volunteer may resign or be removed from an individual case at any time by~~  
6 ~~the order of the juvenile court presiding judge or designee.~~

7  
8 ~~(2) A volunteer may be involuntarily terminated from the program by the~~  
9 ~~program director.~~

10  
11 ~~(4) The volunteer has the right to appeal termination by the program director~~  
12 ~~under the program's grievance procedure.~~

13  
14  
15 **(i) The appointment of CASA volunteers**

16  
17 The CASA program director must develop, with the approval of the presiding  
18 juvenile court judge, a written procedure for the selection of cases and the  
19 appointment of CASA volunteers for children and nonminor dependents in juvenile  
20 court proceedings.

21  
22 **~~(k) CASA program administration and management~~**

23  
24 ~~A CASA program must adopt and adhere to a written plan for program governance~~  
25 ~~and evaluation that includes the following as applicable:~~

26  
27 ~~(1) Articles of incorporation, bylaws, and a board of directors. Any CASA~~  
28 ~~program that functions under the auspices of a public agency or private entity~~  
29 ~~must specify in its plan a clear administrative relationship with the parent~~  
30 ~~organization and clearly delineated delegations of authority and~~  
31 ~~accountability. No CASA program may function under the auspices of a~~  
32 ~~probation department or department of social services. CASA programs may~~  
33 ~~receive funds from probation departments, local child welfare agencies, and~~  
34 ~~the California Department of Social Services if:~~

35  
36 ~~(A) The CASA program and the contributing agency develop a~~  
37 ~~memorandum of understanding (MOU) or contract stating that the~~  
38 ~~funds will be used only for general operating expenses as determined~~  
39 ~~by the receiving CASA program, and the contributing agency will not~~  
40 ~~oversee or monitor the funds;~~

41  
42 ~~(B) A procedure resolving any conflict between the CASA program and~~  
43 ~~contributing agency is implemented so that conflict between the two~~  
44 ~~agencies does not affect funding or the CASA program's ability to~~  
45 ~~retain an independent evaluation separate from that of the contributing~~  
46 ~~agency's; and~~

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1  
2           ~~(C) Any MOU or contract between a CASA program and the contributing~~  
3           ~~agency is submitted to and approved by Judicial Council staff.~~

4  
5           ~~(2) A clear statement of the purpose or mission of the CASA program and~~  
6           ~~express goals and objectives to further that purpose. Where the CASA~~  
7           ~~program is not an independent nonprofit organization, but instead functions~~  
8           ~~under the auspices of a public agency or a private entity, an active advisory~~  
9           ~~council must be established. The advisory council for CASA programs~~  
10           ~~functioning under the auspices of a public agency or a private entity will not~~  
11           ~~function as the governing body of the CASA program. The board of directors~~  
12           ~~for the private entity or the public agency management will function as the~~  
13           ~~governing body for the CASA program, with guidance from the advisory~~  
14           ~~council.~~

15  
16           ~~(3) A procedure for the recruitment, selection, hiring, and evaluation of an~~  
17           ~~executive director for the CASA program.~~

18  
19           ~~(4) An administrative manual containing personnel policies, record-keeping~~  
20           ~~practices, and data collection practices.~~

21  
22           ~~(5) Local juvenile court rules developed in consultation with the presiding judge~~  
23           ~~of the juvenile court or a designee, as specified in section 100. One local rule~~  
24           ~~must specify when CASA reports are to be submitted to the court, who is~~  
25           ~~entitled to receive a copy of the report, and who will copy and distribute the~~  
26           ~~report. This rule must also specify that the CASA court report must be~~  
27           ~~distributed to the persons entitled to receive it at least two court days before~~  
28           ~~the hearing for which the report was prepared.~~

29  
30           **(k) Oversight, support, and supervision of CASA volunteers**

31  
32           A CASA program must adopt and adhere to a written plan, approved by the  
33           presiding juvenile court judge, for the oversight, support, and supervision of CASA  
34           volunteers in the performance of their duties. The plan must:

35  
36           (1) Include a grievance procedure that covers grievances by any person against a  
37           volunteer or CASA program staff and grievances by a volunteer against a  
38           CASA program or program staff. The grievance procedure must:

39  
40           (A) Be incorporated into a document that contains a description of the roles  
41           and responsibilities of CASA volunteers. This document must be  
42           provided:

43  
44           (i) When a copy of the court order that appointed the CASA  
45           volunteer is provided to any adult involved with the child's or

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1 nonminor dependent's case, including but not limited to teachers,  
2 foster parents, therapists, and health-care workers;

3  
4 (ii) To the nonminor dependent upon appointment of the CASA; and

5  
6 (iii) To any person, including a volunteer, who has a grievance  
7 against a volunteer or a CASA program employee.

8  
9 (B) Include a provision that documentation of any grievance filed by or  
10 against a volunteer must be retained in the volunteer's personnel file.

11  
12 (2) Include a provision for the ongoing training and continuing education of  
13 CASA volunteers. Ongoing training opportunities must be provided at least  
14 monthly under section 103(a). CASA volunteers must participate in a  
15 minimum of 12 hours of continuing education in each year of service.

16  
17 ~~(f) — Finance, facility, and risk management~~

18  
19 ~~(1) — A CASA program must adopt a written plan for fiscal control. The fiscal plan~~  
20 ~~must include an annual audit, conducted by a qualified professional, that is~~  
21 ~~consistent with generally accepted accounting principles and the audit~~  
22 ~~protocols in the program's contract with the Judicial Council.~~

23  
24 ~~(2) — The fiscal plan must include a written budget with projections that guide the~~  
25 ~~management of financial resources and a strategy for obtaining necessary~~  
26 ~~funding for program operations.~~

27  
28 ~~(3) — When the program has accounting oversight, it must adhere to written~~  
29 ~~operational procedures in regard to accounting control.~~

30  
31 ~~(4) — The CASA program's board of directors must set policies for and exercise~~  
32 ~~control over fundraising activities carried out by its employees and~~  
33 ~~volunteers.~~

34  
35 ~~(5) — The CASA program must have the following insurance coverage for its staff~~  
36 ~~and volunteers:~~

37  
38 ~~(A) — General liability insurance with limits of liability of not less than \$1~~  
39 ~~million (\$1,000,000) for each person per occurrence/aggregate for~~  
40 ~~bodily injury and not less than \$1 million (\$1,000,000) per~~  
41 ~~occurrence/aggregate for property damage;~~

42  
43 ~~(B) — Nonowned automobile liability insurance and hired vehicle coverage~~  
44 ~~with limits of liability of not less than \$1 million (\$1,000,000)~~  
45 ~~combined single limit per occurrence and in the aggregate;~~

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

1                   ~~(C) — Automobile liability insurance meeting the minimum state automobile~~  
2                   ~~liability insurance requirements, if the program owns a vehicle; and~~

3  
4                   ~~(D) — Workers' compensation insurance with a minimum limit of \$500,000.~~

5  
6                   ~~(6) — The CASA program must require staff, volunteers, and members of the~~  
7                   ~~governing body, when applicable, to immediately notify the CASA program~~  
8                   ~~of any criminal charges against themselves.~~

9  
10                  ~~(7) — The nonprofit CASA program must plan for the disposition of property and~~  
11                  ~~confidential records in the event of its dissolution.~~

12  
13                  **(l) Removal, resignation, and termination of a CASA volunteer**

14  
15                  The CASA program must adopt a written plan for the removal, resignation, or  
16                  involuntary termination of a CASA volunteer, including the following provisions:

17  
18                  (1) A volunteer may resign or be removed from an individual case at any time by  
19                  the order of the juvenile court presiding judge or designee.

20  
21                  (2) A volunteer may be involuntarily terminated from the program by the  
22                  program director.

23  
24                  (3) The volunteer has the right to appeal termination by the program director  
25                  under the program's grievance procedure.

26  
27                  **(m) Confidentiality**

28  
29                  The presiding juvenile court judge and the CASA program director must adopt a  
30                  written plan governing confidentiality of case information, case records, and  
31                  personnel records. The written plan must include the following provisions:

32  
33                  ~~(1) — All information concerning children and families in the juvenile court process~~  
34                  ~~is confidential. Volunteers must not give case information to anyone other~~  
35                  ~~than the court, the parties and their attorneys, and CASA staff.~~

36  
37                  ~~(2) — CASA volunteers are required by law (Pen. Code, § 11166 et seq.) to report~~  
38                  ~~any reasonable suspicion that a child is a victim of child abuse or serious~~  
39                  ~~neglect as described by Penal Code section 273.~~

40  
41                  ~~(3) — The child's original case file must be maintained in the CASA office by a~~  
42                  ~~eustodian of records and must remain there. Copies of documents needed by~~  
43                  ~~a volunteer must be restricted to those actually needed to conduct necessary~~  
44                  ~~business outside of the office. No one may have access to the child's original~~  
45                  ~~case file except on the approval of the CASA program director or presiding~~  
46                  ~~judge of the juvenile court. Controls must be in place to ensure that records~~

Rule 5.655 of the California Rules of Court would be amended, effective January 1, 2019 to read:

- 1                    ~~can be located at any time. The office must establish a written procedure for~~
- 2                    ~~the maintenance of case files.~~
- 3
- 4                    ~~(4) The volunteer's personnel file is confidential. No one may have access to the~~
- 5                    ~~personnel file except the volunteer, the CASA program director or a~~
- 6                    ~~designee, or the presiding judge of the juvenile court.~~
- 7

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
NONMINOR DEPENDENT'S NAME:		
<b>NONMINOR DEPENDENT—          CONSENT TO COPY AND INSPECT COURT FILE</b>		CASE NUMBER:

**To the nonminor dependent:** Review this form with your attorney. This form is used to authorize the release of your court records to your assigned CASA volunteer.

1. I am the Nonminor Dependent in this case. My date of birth is \_\_\_\_\_

**For items 2 through 6, initial the box for each item that applies.** If you have a question about an item, ask your attorney or the judge before you initial that item.

- |   | Initial |
|---|---------|
| 2. I understand that I am not required to give my CASA volunteer consent to inspect and copy my records.  | _____   |
| 3. I understand that my consent includes the inspection and copying of records relating to my dependency case from any agency, hospital, school, organization, division or department of the state, physician and surgeon, nurse, other health care provider, psychologist, psychiatrist, police department, or mental health clinic. | _____   |
| 4. I hereby give my permission for my assigned CASA volunteer to inspect my court records under Welfare and Institutions Code section 107 (a) and (b).  | _____   |
| 5. I hereby give my permission for my assigned CASA volunteer to copy my court records under Welfare and Institutions Code section 107 (a) and (b).   | _____   |
| 6. I understand that I may revoke or modify my consent for the CASA to copy and inspect my records under Welfare and Institutions Code section 107 (a) and (b) at any time after signing this consent form. My revocation may be given orally to my CASA or in writing.   | _____   |

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

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

\_\_\_\_\_  
 (SIGNATURE)

I am the attorney for the child and I have explained to the Nonminor Dependent his/her rights and the potential consequences of signing this consent form.

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

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

\_\_\_\_\_  
 (SIGNATURE)

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Juvenile Law: Psychotropic Medication. Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV 219, JV-220, JV-220(A), JV-220(B), JV 221, JV-222, and JV-223.

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* 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:

Project description from annual agenda: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of Senate Bill 238 (Mitchell; Stats. 2015, ch. 534). This proposal addresses suggestions received from stakeholders who assisted with the implementation of SB 238 and others.

*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 SPR17-

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Title	Action Requested
Juvenile Law: Psychotropic Medication	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.640; adopt form JV-216; revise forms JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223	January 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Kerry Doyle, 415-865-8791 kerry.doyle@jud.ca.gov
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 the rule relating to the administration of psychotropic medications to children who are dependents or wards of the court, adopting one form and revising eight forms, to address suggestions received from stakeholders who assisted with the implementation of recent statutory changes to the requirements for court authorization of psychotropic medication for foster children and others on this rule and these forms.

### Background

As indicated in the bill analysis for Senate Bill 238, enacted in 2015 (Mitchell; Stats. 2015, ch. 534), “[i]n 1999, the Legislature passed Senate Bill 543 (Bowen, Ch. 552, Stats. 1999), which provided that only a juvenile court judicial officer has the authority to make orders regarding the administration of psychotropic medications for foster youth.”<sup>1</sup> This legislation was passed in response to concerns that foster children were being subjected to excessive use of psychotropic medication, and that judicial oversight was needed to reduce the risk of unnecessary medication. The Judicial Council was required to adopt rules of court to implement the new requirement. Accordingly, effective July 1, 2016, the Judicial Council adopted rule 5.640 of the California

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<sup>1</sup> Sen. Com. on Judiciary, Analysis of Sen. Bill No. 238 (2015–2016 Reg. Sess.) Apr. 7, 2015, pp. 1–2.

*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.*

Rules of Court, which specifies the process for juvenile courts to follow in authorizing the administration of psychotropic medications and permits courts to adopt local rules to further refine the approval process.

In 2004, the provisions of SB 543 were amended by Assembly Bill 2502 (Keene; Stats. 2004, ch. 329), which required a judicial officer to approve or deny, in writing, a request for authorization to administer psychotropic medication, or set the matter for hearing within seven days. This amendment was intended to ensure timely consideration of requests for authorization to administer psychotropic medication to dependent children.

Despite these measures, concerns remain that psychotropic medication is overused and underreported in the child welfare system. SB 238 was enacted in 2015 to comprehensively address the issues related to the administration of psychotropic drugs in the foster care system by requiring additional training, oversight, and data collection by caregivers, courts, counties, and social workers. The bill also required the Judicial Council, in consultation with other identified groups, to implement specified provisions of the bill. To implement SB 238, effective July 1, 2016, the Judicial Council amended rule 5.640, approved two optional forms, adopted two mandatory forms, revised four forms, and revised and renumbered one form to implement the mandates of SB 238.

The committee has received information on an ongoing basis about how these forms are functioning. Additionally, as mentioned above, SB 238 required the Judicial Council to implement specified provisions of the bill in consultation with other stakeholder groups. Before the 2016 changes to rule 5.640 and the forms were recommended for adoption, members of the committee met with the stakeholders and made many changes to the rule and forms based on their input. The committee asked this same group of stakeholders for input on this new proposal, specifically asking if they had identified problems in using the forms or rule.

## **The Proposal**

Based on the suggestions received from stakeholders and others, the committee is proposing several clarifying changes to the rule and forms in this “clean-up” proposal.

### **References to *Physician’s Request to Continue Medication—Attachment (form JV-220(B))***

This form was created to address concerns from physicians and physician groups that *Physician’s Statement—Attachment (form JV-220(A))* was too long and would take too long to complete when the physician is requesting to continue use of a medication. In response to these comments, the committee created a shortened form for a request to continue the same medication by the same physician who completed the most recent form JV-220(A). References to form JV-220(B) were not completely inserted into rule 5.640, however. Most notably, a reference was not added to subdivision (h), which requires that a copy of the order and the last two pages of form JV-220(A) be provided to the caregiver. It was also not included on *Order on Application for Psychotropic Medication (form JV-223)* as evidence the judge relied on, and there is not an instruction on the order to provide the last two pages of form JV-220(B) to the caregiver.

This proposal would amend rule 5.640 and revise form JV-223 to add the references to JV-220(B).

**Length of *Physician's Statement—Attachment (form JV-220(A))* and *Physician's Request to Continue Medication—Attachment (form JV-220(B))***

The committee received input from physicians that forms JV-220(A) and JV-220(B) are time-consuming to complete in part because of duplicative questions. The committee carefully reviewed these suggestions and proposes streamlining the forms as follows:

- Removing a duplicative question regarding the symptoms that are expected to improve with the medications prescribed;
- Removing references to alphanumeric codes on form JV-220(A);
- Combining questions regarding the child's response to any current psychotropic medication and the symptoms not alleviated by other current or past treatment efforts so the prescribing physician does not need to provide the same information twice;
- Removing a question regarding the possible adverse reactions, and replacing it with a check box indicating whether the caregiver was given a copy of the informational packets regarding the medication; and
- Removing the requirement that the physician indicate the medication is a continuing medication on form JV-220(B).

The committee also proposes revising the instructions in *Application for Psychotropic Medication (form JV-220)* to clarify that the prescribing physician does not need to complete the questions beyond the first page of the form. The committee also proposes corresponding amendments to rule 5.640. These changes should help decrease the amount of time physicians spend filling out form JV-220 in jurisdictions where the belief is that if the physician is the applicant, he or she must fill out both form JV-220 and form JV-220(A) or form JV-220(B).

**Parental authorization**

Under Welfare and Institutions Code sections 369.5 and 739.5 and rule 5.640(e), the court may order that the parent be authorized to approve or deny the administration of psychotropic medication in limited circumstances. Although parental authorization was not addressed in the winter 2016 proposal, the committee has become aware that the parental authorization process is unclear. The committee received a question from one county regarding whether form JV-220 is required when all parties agree that the parents can consent to psychotropic medication. Sections 369.5 and 739.5 are silent as to the process for the juvenile court to issue an order delegating the

authority to a parent.<sup>2</sup> Rule 5.640(e), however, requires that the court first consider an application and attachments and review the case file.<sup>3</sup>

To clarify the process, the committee proposes revising rule 5.640(e) to mirror statute and to remove the requirement that the court must first consider an application and attachments and review the case file before it can issue an order delegating authority to a parent. The committee further proposes that the rule cross-reference the statute with the required findings to support such an order.

The committee also proposes adopting mandatory *Order Delegating Judicial Authority Over Psychotropic Medication* (form JV-216) to document the court's findings and order.

### **Other form changes**

*Guide to Psychotropic Medication Forms* (form JV-217-INFO) omits parents in the description of people who can submit optional forms. The committee proposes revising this form to include parents and to include references to form JV-220(B) where necessary.

The signature line on *Statement About Medicine Prescribed* (form JV-219) reads "Caregiver signs here." The form, however, can also be filled out by parents, CASA volunteers, and Indian tribes. The committee therefore proposes changing the signature line to read "Sign your name."

*Proof of Notice of Application* (form JV-221) is a mandatory form that currently omits several of the documents that must be provided to the various parties when making an application for psychotropic medication. It also allows the applicant to explain how the caregiver was given information on how to obtain copies of the required forms, but rule 5.640 requires that the caregiver be given copies; it does not authorize the alternative approach of giving the caregiver information about how to obtain copies of the forms.

One court pointed out that submitting more than one *Input on Application for Psychotropic Medication* (form JV-222) is possible, but *Order on Application for Psychotropic Medication* (form JV-223) has space to enter only one form JV-222 as evidence on which the court relied. The committee proposes revising form JV-223 to allow for multiple submissions of form JV-222 and *Statement About the Medicine Prescribed* (form JV-219), and to reference form JV-220(B), as discussed above.

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<sup>2</sup> Sections 369.5 and 739.5 require that this delegation be requisite on making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications.

<sup>3</sup> The findings required by rule 5.640 are broader than those required by section 369.5. The rule requires the court to find that (1) the parent poses no danger to the child, and (2) the parent has the capacity to understand the request and the information provided and to authorize the administration of psychotropic medication to the child, consistent with the best interest of the child.

The committee proposes revising form JV-222 to request information about how long the person filling out the form has known the child and if the child is living in the person's home, for how long the child has lived with him or her.

### **Other changes to rule 5.640**

One large county asked who is required to give notice to the parties of the application. Rule 5.640(c)(8), which governs notice, does not specify. Rule 5.640(c)(5), however, provides that "local county practice and local rules of court determine the procedures for completing and filing the forms and for the provision of notice." The committee proposes amending the rule and moving the text regarding local practice to the paragraph of the rule governing notice.

Rule 5.640(c)(8) does not specify deadlines for serving *Proof of Notice of Application* (form JV-221) on the other parties. The committee proposes revising the rule to clarify that form JV-221 must be filed at the same time as the application.

### **Alternatives Considered**

The committee considered consolidating or eliminating a number of questions on the *Physician's Statement—Attachment* (form JV-220(A)) and *Physician's Request to Continue Medication—Attachment* (form JV-220(B)). The committee proposes some streamlining of these forms to address this concern; however, the committee concluded that most of the questions are critical to the court's oversight role of psychotropic medication and should remain on the form. For example, the committee concluded that specific questions on an assessment of the child's overall mental health and nonpharmacological treatments that the child is participating in were necessary to perform judicial oversight of the orders for psychotropic medication. Judges are also accepting forms that reference another item number if the information is contained in an item already filled out by the physician.

The committee considered that children's Health and Education Passports (HEPs), which are meant to relay pertinent medical information that would support the completion of form JV-220(A) and form JV-220(B), are not delivered in a timely fashion, if at all. Regarding a request that the committee recognize these delays and develop workarounds, the committee concluded that county agencies must resolve this issue, which is not under the council's rule-making authority.

The committee considered, at the request of public health nurses, whether essential laboratory tests should be mandated to be attached to the application for psychotropic medication. The committee concluded that tests need not be attached, given confidentiality concerns and an existing cross-reference in the rule to the Civil Code section that governs how public health nurses can get the necessary information to perform their oversight role.

The committee considered specifying on *County Report on Psychotropic Medication* (form JV-224) which social worker or probation officer should complete the form if the child is placed outside his or her county of original jurisdiction and the responsibility for providing or arranging

for specialty mental health services is transferred to his or her county of residence. The committee concluded, however, that the social worker or probation officer with the most information regarding the child’s mental health treatment should fill out this mandatory form and that person could differ on a case-by-case basis. The committee therefore does not propose directing or limiting who should fill out the form.

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

All the forms and procedures discussed in this invitation to comment were effective July 1, 2016. In implementing the revised forms, courts will incur standard reproduction 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?
- Should a form be created to document the court’s findings and order when the court orders that a parent is authorized to approve or deny the administration of psychotropic medication? If so, should that form be mandatory or optional?
- Should rule 5.640(e) include legal guardians, in addition to parents, as those the court can order authorized to approve or deny the administration of psychotropic medication?

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, rule 5.640, at pages 7–10
2. Proposed forms JV-216, JV-217-INFO, JV-219, JV-220, JV-220(A), JV-220(B), JV-221, JV-222, and JV-223, at pages 11–38
3. Link A: Senate Bill 238,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB238](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB238)

1 **Rule 5.640. Psychotropic medications**

2  
3 (a) \* \* \*

4  
5 (b) **Authorization to administer (§§ 369.5, 739.5)**

6  
7 (1) Once a child is declared a dependent child of the court and is removed from  
8 the custody of the parents or guardian, only a juvenile court judicial officer is  
9 authorized to make orders regarding the administration of psychotropic  
10 medication to the child, unless the court orders that the parent or guardian is  
11 authorized to approve or deny the medication under subdivision (e) of this  
12 rule.

13  
14 (2) Once a child is declared a ward of the court, removed from the custody of the  
15 parents or guardian, and placed into foster care, as defined in Welfare and  
16 Institutions Code section 727.4, only a juvenile court judicial officer is  
17 authorized to make orders regarding the administration of psychotropic  
18 medication to the child, unless the court orders that the parent or guardian is  
19 authorized to approve or deny the medication under subdivision (e) of this  
20 rule.

21  
22 (3) The court must grant or deny the application using *Order on Application for*  
23 *Psychotropic Medication* (form JV-223).

24  
25 (c) **Procedure to obtain authorization**

26  
27 (1) To obtain authorization to administer psychotropic medication to a dependent  
28 child of the court who is removed from the custody of the parents or  
29 guardian, or to a ward of the court who is removed from the custody of the  
30 parents or guardian and placed into foster care, the following forms must be  
31 completed and filed with the court:

32  
33 (A) *Application for Psychotropic Medication* (form JV-220); ~~and~~

34  
35 (B) *Physician's Statement—Attachment* (form JV-220(A)), unless the  
36 request is to continue the same medication and maximum dosage by the  
37 same physician who that completed the most recent JV-220(A); then  
38 the physician may complete *Physician's Request to Continue*  
39 *Medication—Attachment* (form JV-220(B)); and

40  
41 (C) *Proof of Notice of Application* (form JV-221).

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43 (2)–(4) \* \* \*

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(5) Local county practice and local rules of court determine the procedures for completing and filing the forms ~~and for the provision of notice~~, except as otherwise provided in this rule. ~~The person or persons responsible for providing notice as required by local court rules or local practice protocols are encouraged to use the most expeditious manner of service possible to ensure timely notice.~~

(6) *Application for Psychotropic Medication* (form JV-220) may be completed by the prescribing physician, medical office staff, child welfare services staff, probation officer, or the child’s caregiver. If the applicant is the social worker or probation officer, he or she must complete all items on form JV-220. If the applicant is the prescribing physician, medical office staff, or child’s caregiver, he or she must complete and sign only page one of form JV-220.

(7) The physician prescribing the administration of psychotropic medication for the child must complete and sign *Physician’s Statement—Attachment* (form JV-220(A)) or, if it is a request to continue the same medication by the same physician who ~~that~~ completed the most recent JV-220(A), then the physician may complete and sign *Physician’s Request to Continue Medication—Attachment* (form JV-220(B)).

~~(7)~~(8) The court must approve, deny, or set the matter for a hearing within seven court days of the receipt of the completed form JV-220 and form JV-220(A) or form JV-220(B).

~~(8)~~(9) Notice of the application must be provided to the parents or legal guardians, their attorneys of record, the child’s attorney of record, the child’s Child Abuse Prevention and Treatment Act guardian ad litem, the child’s current caregiver, the child’s Court Appointed Special Advocate, if any, and where a child has been determined to be an Indian child, the Indian child’s tribe (see also 25 U.S.C. § 1903(4)–(5); Welf. and Inst. Code, §§ 224.1(a) and (e) and 224.3).

(A) If the child is living in a group home, notice to the caregiver must be by notice to the group home administrator, or to the administrator’s designee, as defined in California Code of Regulations, title 22, regulation section 84064.

~~(B)~~—Local county practice and local rules of court determine the procedures for the provision of notice, except as otherwise provided in this rule. The person or persons responsible for providing notice as required by

1                    local court rules or local practice protocols are encouraged to use the  
2                    most expeditious manner of service possible to ensure timely notice.

3  
4            (C) Notice must be provided as follows:

5  
6            (A)(i) \* \* \*

7                    (i)-(v)a-e \*\*\*\*

8  
9            (B)(ii) \* \* \*

10                   (i)-(v)a-e \*\*\*\*

11  
12           (C)(iii) \* \* \*

13                   (i)-(v)a-e \*\*\*\*

14  
15           (D)(iv) \* \* \*

16                   (i)-(vi)a-f \*\*\*\*

17  
18           (E)(v) \* \* \*

19  
20           ~~(9)(10)~~ \* \* \*

21  
22           ~~(10)(11)~~ \* \* \*

23  
24  
25           (d) \* \* \*

26  
27           (e) **Delegation of authority (§§ 369.5; 739.5)**

28  
29           ~~After consideration of an application and attachments and a review of the case file,~~  
30           If a child is removed from the custody of his or her parent, the court may order that  
31           the parent ~~be~~ is authorized to approve or deny the administration of psychotropic  
32           medication. The order must be based on the ~~following~~ findings in section 369.5 or  
33           section 739.5, which must be included in the order: (1) ~~the parent poses no danger~~  
34           ~~to the child, and (2) the parent has the capacity to understand the request and the~~  
35           ~~information provided and to authorize the administration of psychotropic~~  
36           ~~medication to the child, consistent with the best interest of the child. The court~~  
37           must use form JV-216 to document the findings and order.

38  
39           (f)-(g) \* \* \*

40  
41           (h) **Copy of order to caregiver**

42  
43           (1)-(2) \* \* \*

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- (3) If the court approves the request, the copy of the order must include the last two pages of form JV-220(A) or the last two pages of form JV-220(B) and all medication information sheets (medication monographs) that were attached to form JV-220(A) or form JV-220(B).
  
- (4) If the child resides in a group home, a copy of the order, the last two pages of form JV-220(A) or the last two pages of form JV-220(B), and all medication information sheets (medication monographs) that were attached to ~~the form~~ form JV-220(A) or form JV-220(B) must be provided to the group home administrator, or to the administrator’s designee, as defined in California Code of Regulations, title 22, regulation section 84064.
  
- (5) If the child changes placement, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A) or the last two pages of form JV-220(B), and the medication information sheets (medication monographs) that were attached to form JV-220(A) or form JV-220(B).

**(i)-(k) \* \* \***

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by  
the Judicial Council**

① Parent (*name*): \_\_\_\_\_

- ② The court finds as follows:
- a. The parent poses no danger to the child.
  - b. The parent has the capacity to authorize psychotropic medications.

③ The parent in ① is authorized to approve or deny the administration of psychotropic medication for the child.

*Fill in court name and street address:*

**Superior Court of California, County of**

*Fill in child's name and date of birth:*

**Child's Name:**

**Date of Birth:**

*Court fills in case number when form is filed.*

**Case Number:**

Date:



\_\_\_\_\_  
*Signature*

# JV-217-INFO Guide to Psychotropic Medication Forms

Use these Judicial Council forms to ask for an order to give (or to continue giving) psychotropic medication to a child who is a ward or a dependent of the juvenile court and living in an out-of-home placement or in foster care, as defined in Welfare and Institutions Code section 727.4. Local forms may be used to provide additional information to the court.

*Exception:* These forms are **not** required in these situations:

- If the child lives in an out-of-home facility **not** considered foster care, as defined by section 727.4, unless a local court rule requires it; or
- If there is a previous court order that gives the child’s parent(s) the authority to approve or refuse the medication.

Required Forms	Optional Forms
JV-220 <i>Application for Psychotropic Medication</i>	The <b>parent</b> , child, caregiver, CASA, or Indian tribe wanting to give input to the court may use one of these forms: JV-218 <i>Child’s Opinion About the Medicine</i> JV-219 <i>Statement About Medicine Prescribed</i>
JV-220(A) <i>Physician’s Statement—Attachment</i>	
JV-220(B) <i>Physician’s Request to Continue Medication—Attachment</i>	A person who opposes the proposed medication or who wants to give the court more information may fill out this form: JV-222 <i>Input on Application for Psychotropic Medication</i>
JV-221 <i>Proof of Notice of Application</i>	
JV-223 <i>Order on Application for Psychotropic Medication</i>	
JV-224 <i>County Report on Psychotropic Medication</i>	

## Required Forms

### ① Form JV-220, *Application for Psychotropic Medication*

This *Application* gives the court basic information about the child and his/her living situation. It also provides contact information for the child’s social worker or probation officer.

This form is usually completed by the social worker or probation officer, but is sometimes completed by the prescribing physician or his/her staff, or the child’s caregiver.

Whoever completes the form must identify him/herself by name and by signing the form. If the prescribing physician completes this form, s/he must also complete and sign form JV-220(A) or form JV-220(B). (*See below.*)

### ② Form JV-220(A), *Physician’s Statement—Attachment*

This form is used to ask the court for a *new* order. The prescribing doctor fills out this form then gives it to the person who files the *Application* (form JV-220).

This form provides a record of the child’s medical history, diagnosis, previous treatments, and information about the child’s previous experience with psychotropic medications. The doctor will list his/her reasons for recommending the psychotropic medications.

**Emergencies:** A child may **not** receive psychotropic medication without a court order except in an emergency. A doctor may administer the medication on an emergency basis. For a case to qualify as an emergency, the doctor

must find that the child’s mental condition requires immediate medication to protect him/her or others from serious harm or significant suffering, and that waiting for the court’s authorization would put the child or others at risk. After a doctor administers emergency medication, s/he has two days at most to ask for the court’s authorization.

### ③ Form JV-220(B), *Physician’s Request to Continue Medication—Attachment*

This is a shorter version of form JV-220(A). It may be used only by the same doctor who filled out the most recent form JV-220(A) if s/he is prescribing the same medication with the same maximum dosage. The prescribing doctor fills out this form then gives it to the person who is filing the *Application* (form JV-220).

### ④ Form JV-221, *Proof of Notice of Application*

This form shows the court that all parties with a right to receive notice were served a copy of the *Application* and attachments, according to rule 5.640 of California Rules of Court.

The person(s) in charge of notice must fill out and sign this form. A separate signature line is provided on each page of the form to accommodate those courts in which the provision of notice is shared between agencies. This occurs when local practices or local court rules require the child welfare services agency to provide notice to the parent or legal guardian and the caregiver, and the juvenile court clerk’s office to provide notice to the attorneys and CASA



volunteer. If one agency does all the required noticing, only one signature is required on page 3 of the form. The person(s) in charge of service should use the fastest method of service available so that people can be served on time. E-notice can be used only if the person or people to be e-served agree to it. (Code Civ. Proc., § 1010.6)

**⑤ Form JV-223, Order on Application for Psychotropic Medication**

This form lists the court's findings and orders about the child's psychotropic medications. The agency or person who filed the *Application* must provide the child's caregiver a copy of the court order approving or denying the *Application*.

The copy of the order must be provided (in person or by mail) within two days of when the order is made.

If the court approves the *Application*, the copy of the order must include the last two pages of form JV-220(A) or JV-220(B), and all of the medication information sheets (medication monographs) that were attached to form JV-220(A) or JV-220(B).

If the child's placement is changed, the social worker or probation officer must provide the new caregiver with a copy of the order, the last two pages of form JV-220(A) or JV-220(B), and all of the medication information sheets (medication monographs) that were attached to form JV-220(A) or JV-220(B).

**⑥ Form JV-224, County Report on Psychotropic Medication**

The social worker or probation officer must complete and file this form before each progress review. It has information that the court must review, including the caregiver's and child's observations about the medicine's effectiveness and side effects, information on medication management appointments and other follow-up appointments with medical practitioners, and information on the delivery of other mental health treatments.

This form must be filed at least 10 calendar days before the progress review hearing. If the progress review is scheduled for the same time as a status review hearing, the form must be attached to and filed with the court report.

### Optional Forms

**⑦ Form JV-218, Child's Opinion About the Medicine**

The child may use this form to tell the judge about him/herself and his/her opinion about the medicine.

The child may ask someone s/he trusts for help with the form.

The child may also tell the judge how s/he feels in person at the hearing, by letter, or through his social worker, probation officer, lawyer, or CASA.

**⑧ Form JV-219, Statement About Medicine Prescribed**

The parent, caregiver, CASA, or Indian tribe may use this form to tell the court how they feel about the *Application*, and the effectiveness and side effects of the medicine.

This form must be filed within four court days of receipt of the notice of an *Application*, or before any status review hearing or medication progress review hearing.

This form is not the only way for the parent, caregiver, CASA, or tribe to provide information to the court. They can also provide input on the medication by letter; by talking to the judge at the court hearing; or through the social worker, probation officer, attorney of record, or CASA. A CASA can also file a report under local rule.

**⑨ Form JV-222, Input on Application for Psychotropic Medication**

This form may be used when the parent or guardian, attorney of record for a parent or guardian, child, child's attorney, child's CAPTA guardian ad litem, or Indian child's tribe does not agree that the child should take the recommended psychotropic medication. This form may also be used to provide input to the court.

Within four court days of service of notice of the pending application regarding psychotropic medication, the parent or guardian, his or her attorney, the child, the child's attorney, the child's CAPTA guardian ad litem, or the Indian child's tribe that disagrees must complete, sign, and file form JV-222 with the clerk of the juvenile court.

The court will make a decision about the child's psychotropic medication after reading the *Application*, its attachments, and all statements filed on time. The court is not required to set a hearing if a statement opposed to medication is filed.

If the court does set the matter for a hearing, the juvenile court clerk must provide notice of the date, time, and location of the hearing to the parents or legal guardians, their attorneys, the child if 12 years of age or older, the child's attorney, the child's current caregiver, the child's social worker, the social worker's attorney, the child's CAPTA guardian ad litem, the child's CASA, if any, and the Indian child's tribe at least two court days before the hearing date. In delinquency matters, the clerk also must provide notice to the child regardless of his or her age, the child's probation officer, and the district attorney.

*Clerk stamps date here when form is filed.*

**DRAFT  
Not approved by  
the Judicial Council**

You may use this form to give the court input on the request for an order for medication for the youth.

You do not *have to* use this form if you do not want to. There are other ways to give input to the court. You may:

- Send a letter to the judge,
- Speak to the judge at the hearing, or
- Ask your lawyer or the child’s social worker, probation officer, or CASA to tell the judge how you feel.

You may add pages to this form if you need more space for your answers. Please put the child’s name and the number of the question you are answering on each extra page.

*Fill in court name and street address:*

**Superior Court of California, County of**

**Child’s name:** \_\_\_\_\_  
*(first) (middle) (last)*

*Fill in child’s name and date of birth:*

**Child’s Name:**

**Date of Birth:**

**1** Your name: \_\_\_\_\_  
*(first) (middle) (last)*

*Court fills in case number when form is filed.*

**Case Number:**

**2** Your relationship to the child:  Caregiver  CASA  
 Indian Tribe  Parent  
 Other (*explain*): \_\_\_\_\_

**3** How long have you known the child? \_\_\_\_\_  
*(years) (months) (days)*

**4** How long has the child lived in your home or facility? \_\_\_\_\_  
*(years) (months) (days)*

**The child does not live with me.**

**Child’s Behavior**

**5** How does the child act at home?  Don’t know  
*Describe here:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6** How does the child act at school?  Don’t know  
*Describe here:* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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

Child's name: \_\_\_\_\_

7 How does the child interact with friends and peers?  Don't know  
Describe here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8 How does the child interact with adults?  Don't know  
Describe here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9 How does the child sleep?  Don't know  
Describe how well the child sleeps and about how many hours each day: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Describe the Child's Treatment Now**

10 List any other treatment the child is doing now:  
 None  Individual talk therapy  Family therapy  
 Group talk therapy  Counseling at school  Art or play therapy  
 Cognitive Behavioral Therapy (CBT or practicing behaviors)  
 Other (list any other treatment here): \_\_\_\_\_  
\_\_\_\_\_

11 List all the medicines the child takes regularly now:  Don't know  
Name of medicine: \_\_\_\_\_ Dose (if you know): \_\_\_\_\_  
Name of medicine: \_\_\_\_\_ Dose (if you know): \_\_\_\_\_  
Name of medicine: \_\_\_\_\_ Dose (if you know): \_\_\_\_\_  
 Other medicines (list here): \_\_\_\_\_

12 Did you meet with the doctor who prescribed the psychotropic medicine?  Yes  No  
If Yes:  
a. Did the doctor explain the medicine's expected benefits, and possible side effects, and provide other information about the medicine?  Yes  No  
b. Did you give the doctor information about the child?  Yes  No  
c. Do you agree with use of the medication?  Yes  No  Not sure

Child's name: \_\_\_\_\_

**13 Follow-up and Maintenance**

- a. Do you know about the child's follow-up plan with this doctor?  Yes  No
- b. Do you know how to schedule follow-up appointments with this doctor?  Yes  No
- c. Do you know how and where to get the medicine the doctor prescribed?  Yes  No
- d. Do you know how to make sure the child gets to the follow-up appointments?  Yes  No
- e. Do you know how the child is supposed to take this medicine?  Yes  No
- f. Do you know who is in charge of making sure s/he takes the medicine correctly?  Yes  No  
*If Yes, describe here:* \_\_\_\_\_
- g. Do you know what to do if the child has a bad reaction to the medicine?  Yes  No

**14** List below anything else you want the judge to know.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Fill out questions 15–23 ONLY if the child is taking psychotropic medicine now**

*If the child is not taking this/any psychotropic medicine now, skip to question 24.*

- 15** Does the medicine affect the child's school or ability to learn?  Yes  No  Don't know  
*If Yes, describe here:* \_\_\_\_\_
- \_\_\_\_\_

- 16** Does the medicine affect the child's ability to concentrate?  Yes  No  Don't know  
*If Yes, describe here:* \_\_\_\_\_
- \_\_\_\_\_

- 17** Does the child have reasonable energy levels throughout the day?  Yes  No  Don't know  
*If No, describe here:* \_\_\_\_\_
- \_\_\_\_\_

- 18** Does the medicine affect the child's participation in hobbies or after-school activities?  
 Yes  No  Don't know  
*If Yes, describe here:* \_\_\_\_\_
- \_\_\_\_\_



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

Child's name: \_\_\_\_\_

19 Is it easy to get the child to take the medicine?  Yes  No  Don't know  
If No, describe what it's like: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20 Does anyone talk to the child about how he or she feels when he or she is on this medicine?  
 Yes  No  Don't know  
If Yes, explain who and how often: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21 Has the child's weight changed with this medicine?  Yes  No  Don't know  
If Yes, check one:  Lost weight  Gained weight How many pounds? \_\_\_\_\_

22 List any other side effects from the medicine:  
 Headache  Constipation  Confusion  Feel dizzy  
 Problems sleeping  Feeling very sleepy  Nausea  
 Other (list any other side effects here): \_\_\_\_\_  
\_\_\_\_\_

23 List any benefits you have noticed from the child's taking this medicine:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

24  Check here if you are going to add extra pages to this form. Any say how many pages: \_\_\_\_\_

Date:

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

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

**JV-220**

# Application for Psychotropic Medication

A completed and signed *Physician's Statement—Attachment (form JV-220(A))*, or *Physician's Request to Continue Medication—Attachment (form JV-220(B))* with all its attachments must be attached to this form before it is filed with the court. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms*, for more information about the required forms and the application process.

Clerk stamps date here when form is filed.

**1** Information about where the child lives:

- a. The child lives  with a relative  in a foster home
  - with a nonrelative extended family member
  - in a group home, level \_\_\_\_\_  at a juvenile custodial facility
  - in a short-term residential treatment center
  - other (specify): \_\_\_\_\_

b. If applicable, the name of the facility where the child lives:  
\_\_\_\_\_

c. Contact information for a responsible adult where the child lives:

(1) Name:

(2) Phone:

d. The child has lived at the placement in (a) since (insert date):  
\_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Fill in child's name and date of birth:

**Child's Name:**

**Date of Birth:**

Court fills in case number when form is filed.

**Case Number:**

**2** Information about the child's current location:

- a.  The child remains at the location identified in **1**.
- b.  The child is currently staying in:
  - (1)  a psychiatric hospital (name):
  - (2)  a juvenile hall (name):
  - (3)  other (specify):

**3** Child's  social worker  probation officer

a. Name:

b. Address:

c. Phone:

E-mail:

Fax:

**4** Number of pages attached:

Date:

\_\_\_\_\_  
*Type or print name of person completing this form*

▶  
*Signature*

- Child welfare services staff (sign above, complete items **5**–**13**, and sign on page 4)
- Probation department staff (sign above, complete items **5**–**13**, and sign on page 4)
- Medical office staff (sign above)
- Caregiver (sign above)
- Prescribing physician (sign on page 6 of JV-220(A) or page 4 of JV-220(B))



Child's name: \_\_\_\_\_

If you are the child's social worker or probation officer, you must fill out items 5–13 of this form. If you do not know the answer to a question, write "I do not know." If you are not the child's social worker or probation officer, you do not need to fill out items 5–13 of this form.

5 Describe if the child has shared feelings about starting to take medication. If this is a request to renew or modify medication, include what the child reports regarding the benefits and side effects of having taken the medication.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6 The child will provide input on the medication being prescribed (check all that apply):  
a.  Through the social worker/probation officer.      b.  Through his or her attorney.  
c.  Through his or her CASA.                                      d.  By filling out form JV-218.  
e.  By writing a letter to the judge.                                      f.  By talking to the judge at a hearing.  
g.  Other (specify): \_\_\_\_\_

7 Describe what the caregiver reports regarding the child being placed on the medication. If this is a request to renew or modify medication, include what the caregiver reports regarding the benefits and side effects of having the child take medication.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8 The caregiver will provide input on the medication being prescribed (check all that apply):  
a.  Through the social worker/probation officer.  
b.  By filling out JV-219.  
c.  By writing a letter to the judge.  
d.  By talking to the judge at a hearing.  
e.  Other (specify): \_\_\_\_\_

9 a. Is the information provided by the physician on form JV-220(A) at questions 10 and 11 or on form JV-220(B) at question 8 accurate, to the best of your knowledge?  
 Yes       No       I do not know  
b. Do you have additional information about mental health treatment alternatives to the proposed medications that have been used in the last six months?       Yes       No      If yes, explain:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Child's name: \_\_\_\_\_

- 9 c. Do you have additional information to add about other psychotropic medications that have been tried in the last six months?  Yes  No If yes, explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- d. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped, if the reasons are known to you.

<i>Medication name (generic or brand)</i>	<i>Reason for stopping</i>

- 10 Therapeutic services, other than medication, which the child is enrolled in or is recommended to participate in during the next six months (*check all that apply; include frequency for therapy on blank line*):

- a.  Group therapy: \_\_\_\_\_ b.  Individual therapy: \_\_\_\_\_
- c.  Milieu therapy (*explain*): \_\_\_\_\_
- d.  Therapeutic Behavioral Services (TBS): \_\_\_\_\_
- e.  Therapy for children on the autism spectrum: \_\_\_\_\_
- f.  Art therapy: \_\_\_\_\_
- g.  Cognitive behavioral therapy (CBT): \_\_\_\_\_
- h.  Wraparound services: \_\_\_\_\_
- i.  American Indian/Alaska Native healing and cultural traditions: \_\_\_\_\_
- j.  Speech therapy: \_\_\_\_\_
- k.  In Home Behavioral Services (IHBS): \_\_\_\_\_
- l.  Other modality (*explain*): \_\_\_\_\_

- 11 What other services could benefit or enhance the child's well-being (*for example, sports, art, extracurricular activities*)?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





**JV-220(A)**

**Physician's Statement—  
Attachment**

Case Number:

This form must be completed and signed by the prescribing physician. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 Information about the child (*name*): \_\_\_\_\_

Date of birth: \_\_\_\_\_ Current height: \_\_\_\_\_ Current weight: \_\_\_\_\_

Gender: \_\_\_\_\_ Ethnicity: \_\_\_\_\_

2 Type of request:

- a.  An initial request to administer psychotropic medication to this child
- b.  A request to start a new medication or to increase the maximum dose of a previously approved medication
- c.  A request to continue psychotropic medication the child is currently taking

3  This application is made during an emergency situation as defined in California Rules of Court, rule 5.640(i). The emergency circumstances requiring the temporary administration of psychotropic medication pending the court's decision on this application are:

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

4 Prescribing physician:

a. Name: \_\_\_\_\_ License number: \_\_\_\_\_

b. Address: \_\_\_\_\_

c. Phone numbers: \_\_\_\_\_

d. Medical specialty of prescribing physician:

- Child/adolescent psychiatry     General psychiatry     Family practice/GP     Pediatrics
- Other (*specify*): \_\_\_\_\_

e. How long have you been treating the child? \_\_\_\_\_ years    \_\_\_\_\_ months    \_\_\_\_\_ days

f. In what capacity have you been treating the child (e.g., treating psychiatrist, treating pediatrician)?

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

5 This request is based on a face-to-face clinical evaluation of the child by:

a.  The prescribing physician on (*date*): \_\_\_\_\_

b.  Other (*provide name, professional status, and date of evaluation*): \_\_\_\_\_  
\_\_\_\_\_

6 Information about the child was provided to the prescribing physician by (*check all that apply*):

- Child     Caregiver     Teacher     Social worker     Probation officer     Parent
- Public health nurse     Tribe
- Records (*specify*): \_\_\_\_\_
- Other (*specify*): \_\_\_\_\_



Case Number:

Child's name: \_\_\_\_\_

7 Provide to the court your assessment of the child's overall mental health.  I don't know.

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

8 Describe the child's symptoms, including duration, and the child's treatment plan.  I don't know.

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

9 a. Describe the child's response to any current psychotropic medication.  I don't know.

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

b. Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.  I don't know.

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



Child's name: \_\_\_\_\_

- 10 a. Have nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?  
 Yes     No     I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

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- 11 a. Have other pharmacological treatment alternatives to the proposed medications been tried in the last six months?  
 Yes     No     I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

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c. List the psychotropic medications that you know were taken by the child in the past and the reason or reasons these were stopped if the reasons are known to you.

<i>Medication name (generic or brand)</i>	<i>Reason for stopping</i>

12 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*:

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Child's name: \_\_\_\_\_

**13** Relevant medical history (*describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results*):

I don't know.

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

**14** a.  All essential laboratory tests were performed.  
b.  All essential laboratory tests were not performed (*explain what laboratory tests were not done and why*).

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

**15** a.  The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects, and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was

agreeable       not agreeable

Briefly describe child's response: \_\_\_\_\_

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

b.  The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:

(1)  The child lacks the capacity to provide a response (*explain*): \_\_\_\_\_

(2)  other (*explain*): \_\_\_\_\_

**16** Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months (*check all that apply; include frequency for therapy on blank line*):

a.  Group therapy: \_\_\_\_\_ b.  Individual therapy: \_\_\_\_\_

c.  Milieu therapy (*explain*): \_\_\_\_\_

d.  Therapeutic Behavioral Services (TBS): \_\_\_\_\_

e.  Therapy for children on the autism spectrum: \_\_\_\_\_

f.  Art therapy: \_\_\_\_\_

g.  Cognitive behavioral therapy (CBT): \_\_\_\_\_

h.  Wraparound services: \_\_\_\_\_

i.  American Indian/Alaska Native healing and cultural traditions: \_\_\_\_\_

j.  Speech therapy: \_\_\_\_\_

k.  In Home Behavioral Services (IHBS): \_\_\_\_\_

l.  Other modality (*explain*): \_\_\_\_\_



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

Child's name: \_\_\_\_\_

**17 a. Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

b.  The caregiver was informed of the mandatory information, which is attached.

c.  The caregiver's response was  agreeable  other (explain):

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

**18** Additional information regarding medication treatment plan and follow up: \_\_\_\_\_

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

**19** List all psychotropic medications currently administered that you propose to continue and all psychotropic medications you propose to begin administering. Mark each psychotropic medication as New (N) or Continuing (C).

<i>Medication name (generic/brand) and class, and symptoms targeted by each medication's anticipated benefit to child</i>	<i>C or N</i>	<i>Maximum total mg/day</i>	<i>Treatment duration* 6 month maximum</i>	<i>Administration schedule</i> <ul style="list-style-type: none"> <li>• Initial and target schedule for new medication</li> <li>• Current schedule for continuing medication</li> <li>• Provide mg/dose and # of doses/day</li> <li>• If PRN, provide conditions and parameters for use</li> </ul>
Med: Class: Targets:				

\*Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.



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

Child's name: \_\_\_\_\_

**20** Other information about the prescribed medication that you want the court to know (e.g., reasons for prescribing more than one medication in a class, prescribing outside the approved range, or prescribing medication not approved for a child of this age):

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

**21** List all psychotropic medications currently administered that will be stopped if this application is granted.

<i>Medication name (generic or brand)</i>	<i>Reason for stopping</i>	<i>Stop immediately or over period of time? (specify, including time)</i>

Date:

\_\_\_\_\_  
*Type or print name of prescribing physician*

\_\_\_\_\_  
*Signature of prescribing physician*

**JV-220(B)**

**Physician’s Request to Continue Medication—Attachment**

Case Number:

This form must be completed and signed by the prescribing physician. Read form JV-217-INFO, *Guide to Psychotropic Medication Forms*, for more information about the required forms and the application process.

1 Information about the child (*name*): \_\_\_\_\_  
Date of birth: \_\_\_\_\_ Current height: \_\_\_\_\_ Current weight: \_\_\_\_\_  
Gender: \_\_\_\_\_ Ethnicity: \_\_\_\_\_

2 Fill out this form **only** if both boxes below are checked. If you cannot check both boxes, fill out form JV-220(A).  
a.  This is a request to continue the same psychotropic medication and maximum dosage that the child is currently taking.  
b.  This is the same prescribing physician **who completed** the most recent form JV-220(A).

3 Prescribing physician:  
a. Name: \_\_\_\_\_ License number: \_\_\_\_\_  
b. Address: \_\_\_\_\_  
c. Phone numbers: \_\_\_\_\_  
d. Medical specialty of prescribing physician:  
 Child/adolescent psychiatry     General psychiatry     Family practice/GP     Pediatrics  
 Other (*specify*): \_\_\_\_\_

4 This request is based on a face-to-face clinical evaluation of the child by:  
a.  The prescribing physician on (*date*): \_\_\_\_\_  
b.  Other (*provide name, professional status, and date of evaluation*): \_\_\_\_\_

5 Information about the child was provided to the prescribing physician by (*check all that apply*):  
 Child     Caregiver     Teacher     Social worker     Probation officer     Parent  
 Public health nurse     Tribe  
 Records (*specify*): \_\_\_\_\_  
 Other (*specify*): \_\_\_\_\_

6 Provide to the court your assessment of the child’s overall mental health.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Child's name: \_\_\_\_\_

7 a. Describe the child's response to any current psychotropic medication.

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

b. Describe the symptoms not alleviated or ameliorated by other current or past treatment efforts.

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

8 a. Have nonpharmacological treatment alternatives to the proposed medications been tried in the last six months?  
 Yes       No       I don't know.

b. If yes, describe the treatment and the child's response. If no, explain why not.

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

9 Diagnoses from *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*:

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

10 Relevant medical history (*describe, specifying significant medical conditions, all current nonpsychotropic medications, date of last physical examination, and any recent abnormal laboratory results*):

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



Case Number:
--------------

Child's name: \_\_\_\_\_

- 11 a.  All essential laboratory tests were performed.  
b.  All essential laboratory tests were not performed (*explain what laboratory tests were not done and why*).  
\_\_\_\_\_  
\_\_\_\_\_

- 12 a.  The child was told in an age-appropriate manner about the recommended medications, the anticipated benefits, the possible side effects, and that a request to the court for permission to begin and/or continue the medication will be made and that he or she may oppose the request. The child's response was:  
 Agreeable       Not agreeable  
Briefly describe child's response: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b.  The child has not been informed of this request, the recommended medications, their anticipated benefits, and their possible adverse reactions because:  
(1)  The child lacks the capacity to provide a response (*explain*): \_\_\_\_\_  
\_\_\_\_\_  
(2)  Other (*explain*): \_\_\_\_\_  
\_\_\_\_\_

13 a. **Mandatory Information Attached:** Significant side effects, warnings/contraindications, drug interactions (including those with continuing psychotropic medication and all nonpsychotropic medication currently taken by the child), and withdrawal symptoms for each recommended medication are included in the attached material.

b.  The caregiver was informed of the mandatory information, which is attached.

- c.  The caregiver's response was     agreeable     other (*explain*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14 Additional information regarding medication treatment plan and follow-up: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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

Child's name: \_\_\_\_\_

- 15** Therapeutic services, other than medication, in which the child is enrolled in or is recommended to participate during the next six months (*check all that apply; include frequency for therapy on blank line*):
- a.  Group therapy: \_\_\_\_\_ b.  Individual therapy: \_\_\_\_\_
  - c.  Milieu therapy (*explain*): \_\_\_\_\_
  - d.  Therapeutic Behavioral Services (TBS): \_\_\_\_\_
  - e.  Therapy for children on the autism spectrum: \_\_\_\_\_
  - f.  Art therapy: \_\_\_\_\_ g.  Cognitive behavioral therapy (CBT): \_\_\_\_\_
  - h.  Wraparound services: \_\_\_\_\_
  - i.  American Indian/Alaska Native healing and cultural traditions: \_\_\_\_\_
  - j.  Speech therapy: \_\_\_\_\_
  - k.  In Home Behavioral Services (IHBS): \_\_\_\_\_
  - l.  Other modality (*explain*): \_\_\_\_\_

**16** List all psychotropic medications currently administered that you propose to continue.

<i>Medication name (generic/brand) and symptoms targeted by each medication's anticipated benefit to child</i>	<i>Maximum total mg/day</i>	<i>Treatment duration*</i> <b>6 month maximum</b>	<i>Administration schedule</i> <ul style="list-style-type: none"> <li>• Initial and target schedule for new medication</li> <li>• Current schedule for continuing medication</li> <li>• Provide mg/dose and # of doses/day</li> <li>• If PRN, provide conditions and parameters for use</li> </ul>
Med: Class: Targets:			

\*Authorization to administer the medication is limited to this time frame or six months from the date the order is issued, whichever occurs first.

**17** Other information about the prescribed medication that you want the court to know (e.g., **reasons for** prescribing more than one medication in a class, prescribing outside the approved range, or prescribing medication not approved for a child of this age):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Type or print name of prescribing physician*

  
\_\_\_\_\_  
*Signature of prescribing physician*

Read form JV-217-INFO, *Guide to Psychotropic Medication Forms*, for more information about the required forms and the application process.

Clerk stamps date here when form is filed.

**DRAFT**  
**Not approved by**  
**the Judicial Council**

1  The following parents/legal guardians of the child were notified of the physician’s request to begin and/or to continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided with form JV-217-INFO, a blank copy of form JV-219, *Statement About Medicine Prescribed*, and a blank copy of form JV-222, *Input on Application for Psychotropic Medication*.

Fill in court name and street address:

**Superior Court of California, County of**

a. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Relationship to child: \_\_\_\_\_  
Manner:  In person  By phone at (*specify*): \_\_\_\_\_  
 By electronic service at (*e-mail address*): \_\_\_\_\_  
\_\_\_\_\_ (*time sent*): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (*specify*): \_\_\_\_\_

Fill in child's name and date of birth:

**Child's Name:**

**Date of Birth:**

b. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Relationship to child: \_\_\_\_\_  
Manner:  In person  By phone at (*specify*): \_\_\_\_\_  
 By electronic service at (*e-mail address*): \_\_\_\_\_  
\_\_\_\_\_ (*time sent*): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (*specify*): \_\_\_\_\_

Court fills in case number when form is filed.

**Case Number:**

c. Name: \_\_\_\_\_ Date notified: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
Manner:  In person  By phone at (*specify*): \_\_\_\_\_  
 By electronic service at (*e-mail address*): \_\_\_\_\_ (*time sent*): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (*specify*): \_\_\_\_\_

2  Parental rights were terminated, and the child has no legal parents who must be informed.

3  Parent/legal guardian (*name*): \_\_\_\_\_  
was not informed because (*state reason*): \_\_\_\_\_

4  Parent/legal guardian (*name*): \_\_\_\_\_  
was not informed because (*state reason*): \_\_\_\_\_

5 The child’s current caregiver was notified that a physician is asking to treat the child with psychotropic medication and that an application is pending before the court. The caregiver was provided form JV-217-INFO, *Guide to Psychotropic Medication Forms*, a blank copy of form **JV-218, *Child’s Opinion About the Medicine***, and a blank copy of form JV-219, *Statement About Medicine Prescribed* as follows:



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

Child's name: \_\_\_\_\_

5 Caregiver's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Manner:  In person  By phone at (specify): \_\_\_\_\_  By electronic service at (e-mail address): \_\_\_\_\_  
(time sent): \_\_\_\_\_  By depositing the required information  
in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the following address  
(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 \_\_\_\_\_ Sign your name  Signature follows on page 3.

6  The child's attorney and the child's CAPTA guardian ad litem, if that person is someone other than the child's attorney, were provided with completed form JV-220, Application for Psychotropic Medication; completed form JV-220(A), Physician's Statement—Attachment or completed form JV-220(B), Physician's Request to Continue Medication—Attachment; a copy of form JV-217-INFO, Guide to Psychotropic Medication Forms; a blank form JV-218, Child's Opinion About the Medicine; and a blank copy of form JV-222, Input on Application for Psychotropic Medication, as follows:

a. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Manner:  In person  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing copies in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

b. CAPTA guardian ad litem's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Manner:  In person  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing copies in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

7  The following attorneys were notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. They were also provided form JV-217-INFO, Guide to Psychotropic Medication Forms; a blank copy of form JV-219, Statement About Medicine Prescribed; and a blank copy of form JV-222, Input on Application for Psychotropic Medication, as follows:

a. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Attorney for (name): \_\_\_\_\_  
Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing the required information and copies of forms JV-217-INFO and JV-222 in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

b. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
Attorney for (name): \_\_\_\_\_  
Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_



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

Child's name: \_\_\_\_\_

- 7  By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_
- c. Attorney's name: \_\_\_\_\_ Date notified: \_\_\_\_\_  
 Attorney for (name): \_\_\_\_\_  
 Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

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

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

\_\_\_\_\_ Sign your name  Signature appears below

Type or print name

- 8  The child's CASA volunteer was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. The CASA volunteer was provided form JV-217-INFO, Guide to Psychotropic Medication Forms; a blank copy of form JV-218, Child's Opinion About the Medicine; and a blank copy of form JV-219, Statement About Medicine Prescribed, as follows:
- CASA volunteer (name): \_\_\_\_\_ Date notified: \_\_\_\_\_  
 Manner:  In person  By phone at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

- 9  The Indian child's tribe was notified of the physician's request to begin and/or continue administering psychotropic medication, of the name of each medication, and that an application is pending before the court. It was also provided with form JV-217-INFO, Guide to Psychotropic Medication Forms; a blank copy of form JV-218, Child's Opinion About the Medicine; a blank copy of form JV-219, Statement About Medicine Prescribed; and a blank copy of JV-222, Input on Application for Psychotropic Medication; as follows:
- Indian Tribe (name): \_\_\_\_\_ Date notified: \_\_\_\_\_  
 Manner:  In person  By phone at (specify): \_\_\_\_\_  By fax at (specify): \_\_\_\_\_  
 By electronic service at (e-mail address): \_\_\_\_\_ (time sent): \_\_\_\_\_  
 By depositing the required information in a sealed envelope in the U.S. mail, with first-class postage prepaid, to the last known address (specify): \_\_\_\_\_

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

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

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

Type or print name



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

Child's name: \_\_\_\_\_

6 The application is not opposed, but I want to tell the court the following:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7  I am the attorney for the child.  
a.  I need more time to investigate the application.  
b.  I need the following information to determine whether to agree with or oppose the application:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c.  There is other information the judge should know:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8  Additional information about the child for the court to consider is included on an attached sheet or sheets of paper. (Write "Attachment 5" on top.)

Date:  
\_\_\_\_\_  
*Type or print name*

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

Clerk stamps date here when form is filed.

**DRAFT  
Not approved by  
the Judicial Council**

**The Court read and considered:**

a. Form JV-220, *Application for Psychotropic Medication*, and form JV-220 (A), *Physician’s Statement—Attachment*, or JV-220(B), *Physician’s Request to Continue Medication—Attachment* filed on (date): \_\_\_\_\_

b.  Form JV-218, *Child’s Opinion About the Medicine*, filed on (date): \_\_\_\_\_

c.  Form JV-219, *Statement About Medicine Prescribed*, filed on (date): \_\_\_\_\_

d.  **Form JV-219, *Statement About Medicine Prescribed*, filed on (date): \_\_\_\_\_**

e.  Form JV-222, *Input on Application for Psychotropic Medication*, filed on (date): \_\_\_\_\_

f.  **Form JV-222, *Input on Application for Psychotropic Medication*, filed on (date): \_\_\_\_\_**

g.  CASA report

h.  Other (specify): \_\_\_\_\_

Fill in court name and street address:

**Superior Court of California, County of**

Fill in child's name and date of birth:

**Child's Name:**

**Date of Birth:**

Court fills in case number when form is filed.

**Case Number:**

**The Court finds and orders:**

- 1 a.  Notice requirements were met.
- b.  Notice requirements were *not* met. Proper notice was not given to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2  The matter is set for hearing on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
in (dept.): \_\_\_\_\_

3  Application was made for authorization to begin or to continue giving the child the psychotropic medication listed in 19 on page 5 of form JV-220(A) or 16 on page 4 of form JV-220(B).

**Copies of pages 5 and 6 of form JV-220(A) or pages 3 and 4 of form JV-220(B) are attached to this order.**

The application is (check one):

- a.  Granted as requested.
- b.  Granted with the following modifications or conditions to the request as made in 19 on page 5 of form JV-220(A) or 16 on page 4 of form JV-220(B) (specify all modifications and conditions): \_\_\_\_\_  
\_\_\_\_\_

c.  Denied (specify reason for denial): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the application was for medication the child is currently taking, the social worker or probation officer must consult with the prescribing physician to determine whether the physician is ordering that the medication should be stopped immediately or gradually reduced over time.



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

Child's name: \_\_\_\_\_

4  The applicant must resubmit the application **no later than (date):** \_\_\_\_\_ with the missing information, which is: \_\_\_\_\_  
The matter is set for hearing on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
in (dept.): \_\_\_\_\_

5 The  
a.  social worker  
b.  probation officer  
c.  person who submitted application  
is ordered to give a copy of this order, including pages 5 and 6 of form JV-220(A) **or pages 3 and 4 of form JV-220(B)** and the medication monograph attached to the form JV-220(A) to the child's caregiver either in person or by mail within two court days.

6  Other (specify): \_\_\_\_\_  
\_\_\_\_\_

7 The order is set for a progress review on (date): \_\_\_\_\_ at (time): \_\_\_\_\_  
in (dept.): \_\_\_\_\_

This order is effective until terminated or modified by court order or until 180 days from the date of this order, whichever is earlier. If the prescribing physician is no longer treating the child, this order extends to subsequent treating physicians. A change in the child's placement does not require a new order regarding psychotropic medication. Except in an emergency situation, a new application must be submitted and consent granted by the court before giving the child medication not authorized in this order or increasing medication dosage beyond the maximum daily dosage authorized in this order.

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

 \_\_\_\_\_  
*Signature of judge or judicial officer*

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee and Tribal Court-State Court Forum

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207 [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

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

Approved by RUPRO: December 15, 2016

Project description from annual agenda: Revise CRC 5.552

To conform to the requirements of subparagraph (f) of section 827 of the Welfare and Institutions Code which was added effective January 1, 2015 to clarify the right of an Indian child's tribe to have access to the juvenile court file of a case involving that child. At that time, no changes were made to California Rules of Court rule 5.552 which implements section 827 of the Welfare and Institutions Code. Contrary to section 827 as amended, rule 5.552 continues to require that representatives of an Indian child's tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion.

Submitted for approval to E & P as item II 3 on Annual Agenda to be considered by E & P at a meeting on March 23, 2017. .

*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
Indian Child Welfare Act: Amend Rule 5.552 to Allow Indian Child's Tribe Access to Court Records Consistent with Welfare and Institutions Code Section 827	Please review
	Proposed Effective Date
	January 1, 2018
Proposed Rules, Forms, Standards, or Statutes	Contact
Amend Cal. Rules of Court, rule 5.552	Ann Gilmour, Attorney 415-865-4207 ann.gilmour@jud.ca.gov
Proposed by	Jennifer Walter, Supervising Attorney 415-865-7687 jennifer.walter@jud.ca.gov
Family and Juvenile Law Advisory Committee	
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair	
Hon. Dennis M. Perluss, Cochair	

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee (committee) and Tribal Court–State Court Forum (forum) jointly propose to amend California Rules of Court, rule 5.552 to conform to California statutory law. This proposal is in response to comments from practitioners and court staff advising that the discrepancies between the rule and statutory requirements were causing confusion.

### Background

Effective January 1, 2015, Assembly Bill 1618 (Stats. 2014, ch. 57, § 1) added subdivision (f) to section 827 of the Welfare and Institutions Code<sup>1</sup> to clarify the right of an Indian child's tribe to have access to the juvenile court file of a case involving that child. At that time, no changes were made to rule 5.552 of the California Rules of Court, which implements this section. Contrary to section 827 as amended, rule 5.552 continues to require that representatives of an Indian child's

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Welfare and Institutions 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.*

tribe petition the juvenile court if the tribe wants access to the juvenile court file. This inconsistency has created confusion and results in unnecessary motions.

In addition, court staff have noted that rule 5.552(d)(1)(C) requires that notice of a petition for disclosure be served on “[t]he child,” while the relevant statutes stipulate that notice be served on a child 10 years of age or older.<sup>2</sup> Commentators have noted that serving notice on an infant or young child makes no sense and is a waste of resources.

In addition to these two inconsistencies, the committee and forum also recommend that language in the rule that is duplicative of statutory language be deleted. This follows the request of the Judicial Council Rules and Projects Committee that the Family and Juvenile Law Advisory Committee review rules to determine what language is unnecessarily duplicative of statutory language and recommend rule revisions as appropriate. Since repetitions of statutory text in the rules of court necessitate that they be amended whenever the underlying statutes are amended, deleting the duplicative language will reduce the frequency of rule amendments.

## **The Proposal**

This proposal would:

- Delete subdivision (b) of the rule, which is duplicative of section 827(a). This deletion also addresses the inconsistency between the rule and section 827(f);
- Reletter and amend subdivision (c) of the rule in light of the removal of subdivision (b);
- Change references to “juvenile court record” in subdivision (c) to “juvenile case file” to be consistent with the rest of the rule. Effective 2009, this language was changed throughout the rule except in subdivision (c) which was inadvertently omitted<sup>3</sup>;
- Revise and reletter subdivision (d)(1)(C) of the rule to require notice to a child only when the child is 10 years of age or older, in conformity with sections 290.1 through 295;
- Revise and reletter subdivision (f) of the rule to remove language that is duplicative of section 828; and
- Delete subdivision (g) of the rule, which is duplicative of section 827(b)(2).

These revisions will make the rule consistent with, but not duplicative of, statutes and remove confusion.

## **Alternatives Considered**

The committee and forum considered taking no action at this time. However, as discussed above, rule 5.552 as currently drafted is inconsistent with statutory law. The inconsistency has caused confusion and results in unnecessary court motions and notices, which is an inefficient use of judicial and party resources. The committee and forum also considered whether to leave in the language that is duplicative of statutory law, as some commentators have observed that it helps

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<sup>2</sup> See Welf. & Inst. Code, §§ 290.1–295.

<sup>3</sup> See page 6 of item A36 on the Judicial Council meeting agenda from October 24, 2008 available at: <http://www.courts.ca.gov/documents/102408itema36.pdf>

explain and clarify the statutory requirements that are otherwise confusing. The committee and forum seek comments on this option.

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

No implementation requirements or operational impacts are expected. To the extent any costs are associated with the rule revisions, it is anticipated that they will result in cost savings by avoiding unnecessary motions and notices.

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?
- Given the complexity of Welfare and Institutions Code section 827, would practitioners prefer that the rule retain the existing language in subdivisions (b), (f), and (g) even if it is duplicative of the statutory language?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would courts require in order to implement this proposal? 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 an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?
- How well would this proposal work in small courts? Large courts?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rule 5.552, at pages 4–7

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Title 5. Family and Juvenile Rules**

2  
3 **Division 3. Juvenile Rules**

4  
5 **Chapter 3. General Conduct of Juvenile Court Proceedings**

6  
7 **Rule 5.552. Confidentiality of records (§§ 827, 828)**

8  
9 **(a) \*\*\***

10  
11 **~~(b) — General provisions~~**

12  
13 ~~(1) — The following individuals and entities may inspect, receive, and copy the~~  
14 ~~juvenile case file without an order of the juvenile court:~~

15  
16 ~~(A) — Court personnel;~~

17  
18 ~~(B) — The district attorney, a city attorney, or a city prosecutor authorized to~~  
19 ~~prosecute criminal or juvenile cases under the law;~~

20  
21 ~~(C) — The child who is the subject of the proceeding;~~

22  
23 ~~(D) — The child's parents;~~

24  
25 ~~(E) — The child's guardians;~~

26  
27 ~~(F) — The attorneys for the parties, including any trial court or appellate~~  
28 ~~attorney representing a party in the juvenile proceeding or related~~  
29 ~~appellate proceeding;~~

30  
31 ~~(G) — Judges, referees, other hearing officers, probation officers, and law~~  
32 ~~enforcement officers who are actively participating in criminal or~~  
33 ~~juvenile proceedings involving the child;~~

34  
35 ~~(H) — The county counsel, city attorney, or any other attorney representing~~  
36 ~~the petitioning agency in a dependency action;~~

37  
38 ~~(I) — Members of child protective agencies as defined in Penal Code section~~  
39 ~~11165.9; and~~

40  
41 ~~(J) — The California Department of Social Services in order to carry out its~~  
42 ~~duty to oversee and monitor county child welfare agencies, children in~~  
43 ~~foster care or receiving foster care assistance, and out-of-state~~  
44 ~~placements.~~  
45

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

- 1           ~~(2) The following individuals and entities may inspect the juvenile case file~~  
2           ~~without a court order and may receive a copy of the juvenile case file~~  
3           ~~pursuant to a court order:~~  
4  
5           ~~(A) All persons and entities listed in Welfare and Institutions Code sections~~  
6           ~~827 and 828 who are not listed in (b)(1) above; and~~  
7  
8           ~~(B) An Indian child's tribal representative if the tribe has intervened in the~~  
9           ~~child's case.~~  
10  
11          ~~(3) Authorization for any other person or entity to inspect, obtain, or copy~~  
12          ~~juvenile case files may be ordered only by the juvenile court presiding judge~~  
13          ~~or a judicial officer of the juvenile court.~~  
14  
15          ~~(4) Juvenile case files may not be obtained or inspected by civil or criminal~~  
16          ~~subpoena.~~  
17  
18          ~~(5) When a petition is sustained for any offense listed in section 676, the~~  
19          ~~charging petition, the minutes of the proceeding, and the orders of~~  
20          ~~adjudication and disposition that are contained in the juvenile case file must~~  
21          ~~be available for public inspection, unless the court has prohibited disclosure~~  
22          ~~of those records under that section.~~  
23  
24

25          **(e)(b) Petition**

26  
27          Juvenile case files may only be obtained or inspected in accordance with sections  
28          827 and 828. They may not be obtained or inspected by civil or criminal subpoena.  
29          With the exception of those persons permitted to inspect juvenile case files ~~court~~  
30          ~~records~~ without court authorization under sections 827 and 828, every person or  
31          agency seeking to inspect or obtain juvenile case files ~~court records~~ must petition  
32          the court for authorization using *Petition for Disclosure of Juvenile Case File* (form  
33          JV-570).

- 34  
35          (1) The specific ~~records~~files sought must be identified based on knowledge,  
36          information, and belief that such records exist and are relevant to the purpose  
37          for which they are being sought.  
38  
39          (2) Petitioner must describe in detail the reasons the ~~records~~files are being sought  
40          and their relevancy to the proceeding or purpose for which petitioner wishes  
41          to inspect or obtain the records.  
42

43          **(d)(c) Notice of petition for disclosure**

- 44  
45          (1) \*\*\*  
46

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 (A)-(B) \*\*\*

2 (C) The child if the child is 10 years of age or older;

3  
4 (D)-(I) \*\*\*

5  
6 (2) \*\*\*

7  
8 (3) If the petitioner does not know the identity or address of any of the parties in  
9 ~~(d)~~(c)(1) above, the clerk must:

10  
11 (A)-(B) \*\*\*

12  
13 (4) \*\*\*

14  
15 **(e)(d) Procedure**

16  
17 (1) \*\*\*

18  
19 (2) If petitioner shows good cause, the court may set a hearing. The clerk must  
20 notice the hearing to the persons and entities listed in ~~(d)~~(c)(1) above.

21  
22 (3)-(8) \*\*\*

23  
24 **(f)(e) Reports of law enforcement agencies (§ 828)**

25  
26 ~~Except for records sealed under section 389 or 781, or Penal Code section 1203.45,~~  
27 ~~information gathered and retained by a law enforcement agency regarding the~~  
28 ~~taking of a child into custody may be disclosed without court authorization to~~  
29 ~~another law enforcement agency, including a school district police or security~~  
30 ~~department, or to any person or agency that has a legitimate need for the~~  
31 ~~information for the purposes of official disposition of a case.~~

32  
33 ~~(1) If the law enforcement agency retaining the report is notified under section~~  
34 ~~1155 that the child has escaped from a secure detention facility, the agency~~  
35 ~~must release the name of the child and any descriptive information on~~  
36 ~~specific request by any agency or individual whose attempts to apprehend the~~  
37 ~~child will be assisted by the information requested.~~

38  
39 ~~(2) In the absence of a specific request, the law enforcement agency retaining the~~  
40 ~~report may release information about a child reported to have escaped from a~~  
41 ~~secure detention facility if the agency determines that the information is~~  
42 ~~necessary to assist in the apprehension of the child or the protection of~~  
43 ~~members of the public from substantial physical harm.~~

44  
45 ~~(3) Except as authorized under section 828, all others seeking to inspect or obtain~~  
46 ~~such reports information gathered and retained by a law enforcement agency~~

Rule 5.552 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1            regarding the taking of a child into custody must petition the juvenile court  
2            for authorization, using *Petition to Obtain Report of Law Enforcement*  
3            *Agency* (form JV-575).

4  
5            **(g) — School notification**

6  
7            ~~When a child enrolled in a public school is found to have committed one of the~~  
8            ~~offenses described in section 827(b)(2), the court must provide written notice of the~~  
9            ~~offense and the disposition to the superintendent of the school district within seven~~  
10           ~~days. The superintendent must disseminate information to the principal of the~~  
11           ~~school the child attends, and the principal may disseminate information to any~~  
12           ~~teacher or administrator for the purposes of the rehabilitation of the child or the~~  
13           ~~protection of other students and staff.~~

14  
15           **~~(h)~~(f) Other applicable statutes**

16  
17           Under no circumstances must this rule or any section of it be interpreted to permit  
18           access to or release of ~~records~~files protected under any other federal or state law,  
19           including Penal Code section 11165 et seq., except as provided in those statutes, or  
20           to limit access to or release of records permitted under any other federal or state  
21           statute, including Government Code section 13968.  
22

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Family Law & Juvenile Law: Amendment of California Rules of Court and Revisions to Adoption Forms. Amend California Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325

*Committee or other entity submitting the proposal:*

Family & Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Chris Cleary, 415-865-8792, [christine.cleary@jud.ca.gov](mailto:christine.cleary@jud.ca.gov) and Kyanna Williams, 415-865-7911, [kyanna.williams@jud.ca.gov](mailto:kyanna.williams@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: Provide subject matter expertise to the council by providing recommendations for rules and forms required by recent legislative changes as a result of SB 2872, which provides that in a step-parent adoption if the petitioner does not request that a licensed clinical social worker, therapist, or private adoption agency complete the investigation, the court may collect the investigation fee and assign a probation officer, court investigator, or, if so authorized by the county board of supervisors, the county welfare department to complete the investigation; and SB 1060 which requires a county placement agency to convene a meeting with a dependent, the dependent's sibling or siblings, the prospective adoptive parent or parents, and a facilitator, for the purpose of deciding whether to voluntarily execute a postadoption sibling contact agreement. It further requires the court to inquire about the status and results of this meeting at the first six-month review hearing.

*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
Family Law & Juvenile Law: Stepparent Adoption and Contact After Adoption Revisions and Amendments	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend California Rules of Court, rule 5.451; revise forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325	January 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee, Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	Chris Cleary, 415-865-8792, <a href="mailto:christine.cleary@jud.ca.gov">christine.cleary@jud.ca.gov</a> ; Kyanna Williams, 415-865-7911, <a href="mailto:kyanna.williams@jud.ca.gov">kyanna.williams@jud.ca.gov</a>

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### Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes amending rule 5.451 of the California Rules of Court and revising five Judicial Council forms for use in adoption proceedings.<sup>1</sup> Changes are needed to conform to new legislation, Senate Bill 1060, relating to postadoption contact by siblings of dependent children or youth in delinquency; and Assembly Bill 2872, relating to stepparent adoptions. Other proposed changes correct inaccuracies and outdated material in the forms, which have not been updated since 2003.

### Background

*Adoption Request* (form ADOPT-200) was first adopted by the Judicial Council in October 1998 as part of a proposal for mandatory uniform adoption forms for all minor children subject to adoption proceedings. The forms were revised in October 1999 in response to feedback from users to better meet the needs of courts, practitioners, and petitioners.

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<sup>1</sup> There is, as part of the proposal titled Juvenile Law: Title IV-E Findings & Orders, a proposed revision of two Judicial Council findings and orders forms used after termination of parental rights when there is a permanent plan of adoption or another plan; these revisions also respond to the postadoption contact requirements in Senate Bill 1060.

*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 forms were again revised in April 2000 to facilitate the provision of information about the Adoption Assistance Program to adoptive parents. Form ADOPT-200 was revised in April 2001 to provide information on postadoption contact. In November 2002, the forms were further revised to adopt plain language and to comply with AB 25, which included provisions allowing domestic partners to adopt a partner’s child using the stepparent adoption process. These plain-language forms were again revised in October 2003 to incorporate feedback from users and improve the effectiveness and ease of use of the forms.

The forms were revised again in April 2010 to implement the provisions of AB 1325, tribal-sponsored legislation allowing the adoption of Indian children who are dependents of the court through the custom, traditions, or law of the child’s tribe without requiring termination of parental rights. Form ADOPT-200 was revised in July 2013 to implement legislative changes, including compliance with the Hague Adoption Convention, and numerous suggestions from court personnel and court users.

Form ADOPT-200 was last revised in January 2016 to conform to new statutory requirements under AB 2344, the Modern Family Act, and SB 274. The Modern Family Act expedited adoptions for nonbiological parents. SB 274 amended the Family Code to provide that a child may have a parent-child relationship with more than two parents. To conform to these new requirements, items 3, 11, 12, and 13 on form ADOPT-200 were revised to conform to these new statutory provisions.

The ADOPT-300 series related to postadoption contact has not been revised since it was first adopted in 2003. In addition to updating the forms and conforming them to the requirements of SB 1060, the committee is proposing changes to the form ADOPT-310 “Notice” to users, which was included in the original form approved in 2003 in response to legislation.<sup>2</sup> The council’s attention to plain language in rules and forms began in 2003, and the form ADOPT-310 original notice may have been drafted in plain language to be more understandable to self-represented court users. The committee proposes the revised notice language on the attached form ADOPT-310, which more thoroughly tracks the notice in the legislation while trying to use a plain language approach.

## **The Proposal**

The proposal would:

1. Amend California Rules of Court, rule 5.451, Contact after adoption agreement, to comply with Senate Bill 1060 (Stats. 2016, ch 719), which addresses postadoption contact;

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<sup>2</sup> Sen. Bill 182; Stats. 2003, ch. 251.

2. Revise form ADOPT-200, *Adoption Request*, to comply with Assembly Bill 2872 (Stats. 2016, ch. 702), which addresses the investigation required as part of a stepparent adoption; and
3. Revise forms ADOPT-310, *Contact After Adoption Agreement*; ADOPT-315, *Request to: Enforce, Change, End Contact After Adoption Agreement*; ADOPT-320, *Answer to Request to: Enforce, Change, End Contact After Adoption Agreement*; and ADOPT-325, *Judge's Order to: Enforce, Change, End Contact After Adoption* to facilitate contact with a child after adoption.

Rule 5.451 encourages, where appropriate, postadoption and other permanent plan contact by siblings of dependent children or youth in the delinquency system. Form ADOPT-200 addresses the investigation required as part of a stepparent adoption which may be, at the request of the adoption petitioner, completed by a licensed social worker or therapist or a private adoption agency, in which case the petitioner is not required to pay any investigation fees to the court. That request must be made in writing at the time form ADOPT-200 is filed. It also provides that if the petitioner does not request that a licensed social worker, or therapist, or a private adoption agency complete the investigation, the court may collect an investigation fee and assign a probation officer, court investigator, or, if so authorized by the county board of supervisors, the county welfare department to complete the investigation. Forms ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325 facilitate contact with a child after adoption by birth parents, siblings, other relatives, or with an Indian tribe in an Indian Child Welfare Act (ICWA) case.

The text of the amended rule and the revised forms are attached at pages 6–18.

### **Rationale for Proposal**

The amendment to California Rules of Court, Rule 5.451 is necessary to comply with Assembly Bill 2872 (Stats. 2016, ch. 702), which addresses the investigation required as part of a stepparent adoption. Revisions to form ADOPT-200 are necessary to comply with Assembly Bill 2872 (Stats. 2016, ch. 702), which addresses the investigation required as part of a stepparent adoption. Revisions to forms ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325 are necessary to facilitate contact with a child after adoption. Additional revisions are proposed for the contact after adoption forms, which have not been updated since 2003. These changes are necessary to make the contact after adoption forms fully compliant with existing statutes and to improve their readability and ease of use.

### **Alternatives Considered**

There were no appropriate alternatives to revising forms ADOPT-200, ADOPT-310, and ADOPT-315 because the new legislation made them inaccurate. The revisions were necessary to comply with legislative intent. And, it seemed appropriate to do necessary updating to forms ADOPT-320 and ADOPT-325, which were in the same family of contact-after-adoption forms and had not been revised since 2003.

The committee considered referring to the Family and Welfare and Institutions Code sections rather than amending rule 5.451, to avoid having the rule track the statute. But on review of the statutes involved, it seemed that it would be much clearer to any potential court user to have one rule that covers the issue of contact after adoption, rather than being referred to two separate statutes that could be confusing.

### **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 revising five existing forms. These costs are outweighed by the efficiency benefits of making it easier for litigants to provide the information that the court needs for these cases in a concise and structured manner. This should aid in processing these adoption cases and result in a decreased need for court assistance and case management.

### **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 changes to the “Notice” in form ADOPT-310 written in a way that would be understandable to a typical self-represented court user? (Note: like many Californians, self-represented litigants often read at a 6<sup>th</sup> grade level or lower.)

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Do you have local rules that would be affected by these changes?
- 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 three 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, rules 5.451, at page 6
2. Judicial Council forms ADOPT-200, ADOPT-310, ADOPT-315, ADOPT-320, ADOPT-325, at pages 7–18
3. Attachment A: SB 1060 (Stats. 2016, ch. 719),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB2872](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2872)

4. Attachment B: AB 2872 (Stats. 2016, ch. 702),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1060](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1060)

Rule 5.451 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Rule 5.451. Contact after adoption agreement**

2

3 (a) \* \* \*

4

5 (b) **Contact after adoption agreement**

6

7 An adoptive parent or parents; a birth relative or relatives, including a birth parent  
8 or parents or any siblings of a child who is the subject of an adoption petition; or an  
9 Indian tribe that the child is a member of and the child may enter into a written  
10 agreement permitting postadoption contact between the child and birth relatives  
11 including the birth parent or parents or any siblings, or an Indian tribe. No  
12 prospective adoptive parent or birth relative may be required by court order to enter  
13 into a contact-after-adoption agreement.

14

15 (c)–(k) \* \* \*

**If you are adopting more than one child, fill out an adoption request for each child.**

**1** Your name(s) (*adopting parent(s)*):

a. \_\_\_\_\_

b. \_\_\_\_\_

Relationship to child: \_\_\_\_\_

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

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

Telephone number: \_\_\_\_\_

Lawyer (if any): (*Name, address, telephone numbers, e-mail address, and State Bar number*):

\_\_\_\_\_

\_\_\_\_\_

**2** I/We filed this *Adoption Request* in this court because it is in the county (*check all that apply*):

- Where the adopting parent(s) reside;
- Where the child was born or where the child now lives;
- Where an office of the agency that placed the child for adoption is located;
- Where an office of the department or public adoption agency that is investigating the petition is located;
- Where a placing birth parent or parents lived when the adoptive placement agreement, consent or relinquishment was signed;
- Where a placing birth parent or parents live(s) when the petition was filed;
- Where the child was freed for adoption.

*(If the child is a dependent of the court, the Adoption Request must be filed in the county where the child was freed for adoption or the county where the adopting parent(s) reside(s). See Fam. Code, § 8714.)*

**3** Type of adoption (*check one*):

Agency (*name*): \_\_\_\_\_

Relative     Nonrelative

Joinder will be filed.     Joinder is being filed at same time as this *Adoption Request*.

Tribal customary adoption  
(*attach tribal customary adoption order*)

Independent

Relative     Nonrelative     Additional Parent(s)

Intercountry (*name of agency*):

\_\_\_\_\_

This adoption may be subject to the Hague Adoption Convention ([form ADOPT-216](#) must be filed with this request).

Clerk stamps date here when form is filed.

**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:**

*(To be completed by the clerk of the superior court if a hearing date is available.)*

Hearing is set for:  
**Hearing Date** → Date: \_\_\_\_\_  
 Time: \_\_\_\_\_  
 Dept.: \_\_\_\_\_ Room: \_\_\_\_\_

Name and address of court if different from above:

\_\_\_\_\_

\_\_\_\_\_

**To the person served with this request:** If you do not come to this hearing, the judge can order the adoption without your input.



Your name: \_\_\_\_\_

- Stepparent
  - Stepparent adoption to confirm parentage. (Select this option if you were married to or in a state-registered domestic partnership with the birth parent at the time the child was born **and** you remain in that union.)

**4** Information about the child:

- a. The child's new name will be: \_\_\_\_\_
- b.  Boy  Girl
- c. Date of birth: \_\_\_\_\_ Age: \_\_\_\_\_
- d. Child's address (if different from yours):  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_
- e. Place of birth (if known):  
City: \_\_\_\_\_  
State: \_\_\_\_\_ Country: \_\_\_\_\_
- f. If the child is 12 or older, does the child agree to the adoption?  Yes  No
- g. Date child was placed in your physical care: \_\_\_\_\_

**5** Child's name before adoption (Fill out ONLY if this is an independent, stepparent, or tribal customary adoption):

\_\_\_\_\_

**6** Does the child have a legal guardian?  Yes  No  
(If yes, attach a copy of the Letters of Guardianship and fill out below):

- a. Date guardianship ordered: \_\_\_\_\_
- b. County: \_\_\_\_\_
- c. Case number: \_\_\_\_\_

**7** Is the child a dependent of the court?  Yes  No  
(If yes, fill out below):

Juvenile case number: \_\_\_\_\_  
County: \_\_\_\_\_

**8** Child may have Indian ancestry:  Yes  No

- a. Whether you answered "Yes" or "No," you must fill out and attach *Indian Child Inquiry Attachment* (form [ICWA-010\(A\)](#)) and *Parental Notification of Indian Status* (form [ICWA-020](#)) or other proof that ICWA inquiry has been completed in accordance with rule 5.481(a).
- b. If you answered "Yes," you must also fill out and attach *Adoption of Indian Child* (form ADOPT-220) if, after notice, it is determined that ICWA does apply to the child.

**9** Names of birth parents, if known:

a. Mother: \_\_\_\_\_ b. Father: \_\_\_\_\_

**10** If this is an agency adoption:

- a. I/We have received information about the Adoption Assistance Program, the Regional Center, mental health services available through Medi-Cal or other programs, and federal and state tax credits that might be available.  
 Yes  No
- b. All persons with parental rights agree that the child should be placed for adoption by the California Department of Social Services or a county adoption agency or a licensed adoption agency (Fam. Code, § 8700) and have signed a relinquishment form approved by the California Department of Social Services, and the time to revoke the relinquishment has expired or been waived.  
 Yes  No (If no, list the name and relationship to child of each person who has not signed the relinquishment form or whose time to revoke the relinquishment has not expired or been waived):  
\_\_\_\_\_  
\_\_\_\_\_



Your name: \_\_\_\_\_

- c. This is a tribal customary adoption under Welfare and Institutions Code section 366.24. Parental rights have been modified under and in accordance with the attached tribal customary adoption order, and the child has been ordered placed for adoption.  Yes  No
- d. This is an adoption conducted under the requirements of the Hague Adoption Convention and the child will be moving or has already moved with the adopting parent(s) to another Hague Convention member country at the conclusion of this adoption.  Yes  No If yes, child will be moving or has moved to *(name of country)*: \_\_\_\_\_ and adopting parent(s):  seek(s) a California adoption  will be petitioning for a Hague Adoption Certificate  will be seeking a Hague Custody Declaration.

**11) If this is an independent adoption:**

- a. A copy of the Independent Adoptive Placement Agreement from the California Department of Social Services is attached. (This is required in most independent adoptions; see Fam. Code, § 8802.)  Yes  No
- b. All persons with parental rights agree to the adoption and have signed the Independent Adoptive Placement Agreement or consent on the appropriate California Department of Social Services form.  Yes  No *(If no, list the name and relationship to child of each person who has not signed the agreement form):* \_\_\_\_\_
- c. I/We will file promptly with the department or delegated county adoption agency the information required by the department in the investigation of the proposed adoption.  Yes  No
- d.  This is an independent adoption involving additional parent(s):  All persons with existing parental rights agree to this adoption and will maintain their existing parental rights.  An agreement waiving termination of parental rights, signed by both the existing parent(s) and the adopting parent(s) is attached.

**12) If this is a stepparent adoption:**

- a. The birth parent *(name)*: \_\_\_\_\_  has signed a consent  will sign a consent
- b. The birth parent *(name)*: \_\_\_\_\_  has signed a consent  will sign a consent
- c. The adopting parents were married on **or** The domestic partnership was registered on *(date)*: \_\_\_\_\_ *(For court use only. This does not affect social worker’s recommendation. There is no waiting period.)*
- d.  I am seeking a stepparent adoption to confirm my parentage. At the time the child was born, I was married to or in a state-registered domestic partnership with the parent who gave birth and we remain in that union. see attached  Form ADOPT-205 or  Declaration describing the circumstances of the child’s conception
- e. I choose to have the investigation or written report completed by  a licensed clinical social worker,  a licensed marriage and family therapist, or  a private licensed adoption agency.

*Note: If you do not elect to set up the investigation yourself, the court may collect an investigation fee from you and assign an investigator.*

- 13)**  The child was conceived by assisted reproduction in compliance with Family Code section 7613.

**14) Contact after adoption**

- Contact After Adoption Agreement (form ADOPT-310)*  is attached  will not be used
- will be filed at least 30 days before the adoption hearing  is undecided at this time.
- This is a tribal customary adoption. Postadoption contact is governed by the attached tribal customary adoption order.

**15) Consent for adoption is not necessary because (complete all sections that apply to your adoption):**

- a.  The consent of the  birth parent  presumed father is not necessary because *(check the applicable reasons under Fam. Code, § 8606):*
  - (1)  The parent has been judicially deprived of the custody and control of the child.



Your name: \_\_\_\_\_

- (2)  The parent has voluntarily surrendered the right to custody and control of the child in a judicial proceeding in another jurisdiction, under a law of that jurisdiction providing for the surrender.
- (3)  The parent has deserted the child without providing information to identify the child.
- (4)  The parent has relinquished the child under Family Code section 8700.
- (5)  The parent has relinquished the child for adoption to a licensed or authorized child-placing agency in another jurisdiction.

b.  A court ended the parental rights of:

Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_ on (date): \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_ on (date): \_\_\_\_\_  
 (Enter the date of the court order ending parental rights and attach a copy of the order.)

c.  The child is the subject of a tribal customary adoption order under Welfare and Institutions Code section 366.24, which has modified the parental rights of:

Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_ on (date): \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_ on (date): \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_ on (date): \_\_\_\_\_  
 (Attach a copy of the order.)

d.  I/We will ask the court to end the parental rights of (attach copy of Petition to Terminate Parental Rights or Application for Freedom From Parental Custody, if filed):

Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_

e.  Adopting parent has custody of the child by court order or by agreement with the other parent, and each of the following persons with parental rights has not contacted the child and has not paid for the child’s care, support, and education for one year or more when able to do so. (Fam. Code, § 8604(b).)

Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
 Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_

f.  The child has been abandoned as follows:

- (1)  The child has been left by the child’s parent or parents with no way to identify the child.
- (2)  The child has been left in the custody of another person by both parents or the sole parent for six months without providing for the child’s support, or without communication from the parent or parents, with the intent to abandon the child.
- (3)  One parent has left the child in the care and custody of the other parent for one year or longer without providing for the child’s support or without communication from the parent, with the intent to abandon the child.

(If any of the above boxes is checked, adopting parent must also check item 15(d) and file an Application for Freedom from Parental Custody. See Fam. Code, § 7822(a).)

g.  The consent of the presumed father is not required because he did not become a presumed father before the mother’s relinquishment or consent became irrevocable or the mother’s parental rights were terminated. (Fam. Code, § 8604(a).)



Your name: \_\_\_\_\_

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

h.  Each of the following persons with parental rights has died:

Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_  
Name: \_\_\_\_\_ Relationship to child: \_\_\_\_\_

**16** Suitability for adoption

Each adopting parent:

- a. Is at least 10 years older than the child or meets the criteria in Family Code section 8601(b);
- b. Will treat the child as his or her own;
- c. Will support and care for the child;
- d. Has a suitable home for the child; *and*
- e. Agrees to adopt the child.

**17**  I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all the rights and duties of this relationship, including the right of inheritance.

I/We ask the court to date its order approving the adoption as of an earlier date (*date*): \_\_\_\_\_ for the following reason (Fam. Code, § 8601.5):  
\_\_\_\_\_  
\_\_\_\_\_

*(Enter a date no earlier than the date parental rights were ended.)*

This is a tribal customary adoption. I/We ask the court to approve the adoption and to declare that the adopting parents and the child have the legal relationship of parent and child, with all of the rights and duties stated in the attached tribal customary adoption order and in accordance with Welfare and Institutions Code section 366.24.

**18** If a lawyer is representing you in this case, he or she must sign here:

Date: \_\_\_\_\_ *Type or print lawyer's name*       \_\_\_\_\_  
*Signature of lawyer for adopting parent(s)*

**19** I declare under penalty of perjury under the laws of the State of California that the information in this form and all its attachments is true and correct to my knowledge. This means that if I lie on this form, I am guilty of a crime.

Date: \_\_\_\_\_ *Type or print your name*       \_\_\_\_\_  
*Signature of adopting parent*

Date: \_\_\_\_\_ *Type or print your name*       \_\_\_\_\_  
*Signature of adopting parent*

**NOTICE—ACCESS TO AFFORDABLE HEALTH INSURANCE:** Do you or someone in your household need affordable health insurance? If so, you should apply for Covered California. Covered California can help reduce the cost you pay toward high-quality affordable health care. For more information, visit [www.coveredca.com](http://www.coveredca.com). Or call Covered California at 1-800-300-1506 (English) or 1-800-300-0213 (Spanish).

# ADOPT-310

## Contact After Adoption Agreement

Original       Change

Clerk stamps date here when form is filed.

**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** Your name(s):

a. \_\_\_\_\_

b. \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Your address (skip this if you have a lawyer):

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

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

Your phone #: \_\_\_\_\_

Your lawyer (if you have one): (Name, address, phone #, and State Bar #):

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

**2** Information about the child:

a. Child's name (after adoption): \_\_\_\_\_

b. Date of birth: \_\_\_\_\_ Age: \_\_\_\_\_

c. Is the child a dependent of Juvenile Court?     No     Yes

*If yes, Juvenile Court and Juvenile Case number:*

County: \_\_\_\_\_ Case #: \_\_\_\_\_

d. *If the child has a lawyer, fill out below. If Item 2c is yes, child must have a lawyer (Fam. Code, § 8714.7).*

Name of child's lawyer: \_\_\_\_\_

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

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

Phone #: \_\_\_\_\_ State Bar #: \_\_\_\_\_

**3** The people below agree with the requesting party(ies) in **1** about contact with the child after adoption. *If the agreement is confidential, write "Confidential" instead of the person's name.*

*If you need more space, attach a sheet of paper. Write "ADOPT-310, Item 3—Other Relatives" at the top.*

**Type of Contact** (circle all that apply):

Telephone    Letter    Visits  
 Share Info    E-mail    Other\*

Name	Relationship to Child						
a.							
b.							
c.							
d.							
e.							
f.							
g.							

*\*Explain type of contact on a sheet of paper. Write "ADOPT-310, Item 3—Other Types of Contact" at the top.*

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



Your name: \_\_\_\_\_

4 If you have a signed, written agreement about Contact After Adoption, attach a copy.  
Number of pages attached: \_\_\_\_\_

5 The parties have discussed the reasons for continued contact between the child and the specified relatives or other parties, considering the best interests of the child.

**Notice**

1. After the judge signs the Adoption Request for this child, the adoption is final, even if anyone who signed this agreement does not follow it.
2. The adoption will still be final even if the people who signed this agreement change their minds, go to court to enforce the agreement, or have other problems with it.
3. Before this agreement can be changed by the court, all of the people who signed it have to try to fix any problems with it through a dispute resolution program, like mediation.
4. When the adopted child turns 18, he or she can cancel any part of this agreement.

6 Everyone involved in this agreement must sign below (including the child, if 12 or older, and the child's attorney).

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

Date: \_\_\_\_\_  
*Type or print your name and relationship to child*      *Sign your name*

If more relatives need to sign, attach a sheet of paper. Write "ADOPT-310, Item 6—Signatures of Other Relatives," at the top.

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

Date: \_\_\_\_\_  
*Judge (or Judicial Officer)*

# ADOPT-315

## Request to: Enforce, Change, End Contact After Adoption Agreement

Clerk stamps date here when form is filed.

**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** Your name(s):

a. \_\_\_\_\_

b. \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Your address (skip this if you have a lawyer):

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

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

Your phone #: \_\_\_\_\_

Your lawyer (if you have one): (Name, address, phone #, and State Bar #):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**2** Child's name (if known):

Child's adopted name (if known): \_\_\_\_\_

Date of birth: \_\_\_\_\_ Age: \_\_\_\_\_

**3** I/We want to (check one):  Enforce  Change  End an existing Contact After Adoption Agreement.

**The judge will not look at your request unless you and the other people who signed ADOPT-310 first try to come to an agreement using a dispute resolution program, like mediation.**

**4** List all people who signed the original Contact After Adoption Agreement (form ADOPT-310). If the agreement was confidential, write "Confidential" instead of the person's name.

Name/Relationship to child:

a. \_\_\_\_\_

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

**Notice to people listed in 4 who are served with this form:**

- The adoption of the child named in 2 is still valid.
- The adoption can never be canceled or changed.
- If you disagree with this form, you must file ADOPT-320 within 30 days after receiving this form.



Your name: \_\_\_\_\_

- 5 Attach to this request:
- A copy of ADOPT-310 (Contact After Adoption Agreement)
  - A copy of the signed, written agreement about Contact After Adoption, if there is one
  - Proof of Service showing this form was served on each person in 4, along with a blank answer form (ADOPT-320)

- 6 If any person in 4 was not served, you must explain in writing why he or she was not served.  
Check below, if true:
- a.  I do not know the names of the other people who signed the original Contact After Adoption Agreement, so I could not serve them.
  - b.  The other people who signed the original Contact After Adoption Agreement (ADOPT-310) agree with what I am asking in this request and have signed ADOPT-320.

If you want to give more explanation, attach a sheet of paper and write "ADOPT-315, Item 6" at the top.

- 7 Remember: The judge will not look at your request until all people who signed ADOPT-310 have tried to come to an agreement using mediation or other form of dispute resolution.
- I/We have tried to resolve these issues by using a dispute resolution program, like mediation.

8 Check on of the boxes below:

**I/We ask the court to:**

- a.  Enforce ADOPT-310. Explain how the original agreement has not been followed:

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

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce310" at the top.

- b.  Change ADOPT-310. Describe the changes you want and how these changes will be good for the child:

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

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce310" at the top.

- c.  End ADOPT-310. Explain why you want to end the agreement and how ending the agreement will be good for the child:

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

If you need more space, attach a sheet of paper and write "ADOPT-315, Item 8—Enforce310" at the top.

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

- 9 I/We declare under penalty of perjury under the laws of the State of California that the information in this form is true and correct, which means if I lie on this form, I am guilty of a crime.

Date: \_\_\_\_\_  \_\_\_\_\_  
 Type or print your name and relationship to child Sign your name

Date: \_\_\_\_\_  \_\_\_\_\_  
 Type or print your name and relationship to child Sign your name

# ADOPT-320

## Answer to Request to: Enforce, Change, End Contact After Adoption Agreement

Clerk stamps date here when form is filed.

**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 This is my answer to the request to (check one):

- Enforce     Change     End

an existing Contact After Adoption Agreement.

a. Name(s) of person who filed ADOPT-315 and his or her relationship to the child:

b. I received a copy of the signed, written agreement, ADOPT-310.

2 Your name(s):

a. \_\_\_\_\_

b. \_\_\_\_\_

Relationship to child: \_\_\_\_\_

Your address (skip this if you have a lawyer):

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

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

Your phone #: \_\_\_\_\_

Your lawyer (if you have one): (Name, address, phone #, and State Bar #):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3 Child's adopted name (if you know): \_\_\_\_\_

Date of birth: \_\_\_\_\_ Age: \_\_\_\_\_

Date of adoption (if you know): \_\_\_\_\_

4 Check all that apply:

a.  I agree with the requests listed in ADOPT-315 and think the requests are in the child's best interests.

b.  I do not agree with the requests in ADOPT-315 because:

\_\_\_\_\_

\_\_\_\_\_

If you need more space, attach a sheet of paper and write "ADOPT-320, Item 4—Do Not Agree With 315" at the top.

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

c.  I/We have NOT tried to resolve these issues by using a dispute resolution program, like mediation.

Date: \_\_\_\_\_  
Type or print your name and relationship to child

▶  
\_\_\_\_\_  
Sign your name

Date: \_\_\_\_\_  
Type or print your name and relationship to child

▶  
\_\_\_\_\_  
Sign your name

**ADOPT-325**

**Judge's Order to:  
Enforce, Change, End Contact  
After Adoption Agreement**

Clerk stamps date here when form is filed.

**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 Your name(s) (person(s) who asked for this order):  
a. \_\_\_\_\_  
b. \_\_\_\_\_  
Your address (skip this if you have a lawyer):  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Your phone #: \_\_\_\_\_  
Your lawyer (if you have one): (Name, address, phone #, and State Bar #):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2 Adopted child's name:  
Date of birth: \_\_\_\_\_ Age: \_\_\_\_\_

3 People present in court today (date): \_\_\_\_\_ in:  
Dept.: \_\_\_\_\_ Div.: \_\_\_\_\_ Rm.: \_\_\_\_\_  
Judge: \_\_\_\_\_  
 Adopting parent(s)     Lawyer for adopting parent(s)     Child     Child's lawyer  
 Parent keeping parental rights (stepparent/domestic partner):  
 Other people present (list name and relationship to child):  
a. \_\_\_\_\_ c. \_\_\_\_\_  
b. \_\_\_\_\_ d. \_\_\_\_\_  
 Not present:

**Judge will fill out section below.**

4 The judge has reviewed:  
 ADOPT-310     ADOPT-315     ADOPT-320     Other evidence     Testimony  
 All people listed in ADOPT-315 have tried to come to an agreement using mediation or some other form of dispute resolution. (Fam. Code, § 8714.7.)

5  **Enforcement**  
**The judge finds and orders:**  
a.  The Contact After Adoption Agreement is a legally enforceable agreement.  
b.  The Contact After Adoption Agreement is not enforced because:  
(1)  The person who asked the judge to enforce the Agreement has not tried to solve the problem using mediation or similar method.  
(2)  Enforcing the agreement is not in the child's best interests.  
(3)  Other: \_\_\_\_\_



Your name: \_\_\_\_\_

**Judge will fill out section below.**

**6**  **Change or End the Agreement**

- a.  The judge **approves** the request to  change  end the Contact After Adoption Agreement because:
  - (1)  All people involved, including the child (if 12 or older), agreed in writing to the requests listed in ADOPT-315
  - (2)  It is in the best interests of the child
  - (3)  There have been important changes since the original agreement was approved *and*
  - (4)  The applicant has participated, or tried to participate, in an appropriate method to resolve the problem outside of court.
- b.  The judge **does not approve** the request to  change  end the contact After Adoption Agreement because:
  - (1)  It is not in the best interest of the child
  - (2)  No important changes have happened since the original agreement was approved
  - (3)  The applicant has not participated, nor tried to participate, in an appropriate method to resolve the problem outside of court.
- c.  The judge **approves** the request to  change  end the Contact After Adoption Agreement as amended. A new ADOPT-310 will be filed.

**7**  **More Time to Study or Evaluate**

- a.  The judge needs more time to make a decision.
- b.  The judge orders further study or evaluation of the issues in the request because there is clear and convincing evidence that:
  - (1)  It is the only way to protect or promote the child's best interest *and*
  - (2)  It will not disturb the stability of the child's home
- c.  The study or evaluation must look at the following:
  - (1)  Whether the request(s) in ADOPT-315 will be good for the child
  - (2)  The child's wishes
  - (3)  The child's mental health
  - (4)  Other: \_\_\_\_\_
- d.  The study or evaluation will be done by (*individual or agency*): \_\_\_\_\_  
The people involved must cooperate with this individual or agency.
- e.  The cost of the study or evaluation and written report will be paid by:  
Name(s) of person to pay: \_\_\_\_\_  
Relationship to child: \_\_\_\_\_
- f.  The judge and all people involved in this case will get a complete report by (*date*): \_\_\_\_\_
- g.  The judge will review the report and make a decision by: \_\_\_\_\_
- h.  The people involved in this case must return to court on (*date*): \_\_\_\_\_  
at (*time*): \_\_\_\_\_  a.m.  p.m.

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



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

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court - Amend Cal. Rules of Court, rule 5.372

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee and Tribal Court-State Court Forum

*Staff contact (name, phone and e-mail):* Ann Gilmour, 415-865-4207 [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov)

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

Approved by RUPRO: December 15, 2016

Project description from annual agenda: Revise CRC 5.380 [sic. 5.372]

First adopted by the Judicial Council effective January 1, 2014 to implement in California the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 authorizing federally recognized tribes to develop their own tribal title IV-D child support programs when the Yurok Tribe became the first California tribe to begin accepting child support cases. Since initial implementation, the need for revisions to streamline and improve the process have been identified and should be undertaken in light of additional tribal title IV-D programs commencing operations in California.

Submitted to E & P for approval as part of the Tribal Court-State Court Forum annual agenda for consideration at March 23, 2017 E & P meeting.

*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
Family Law: Transfers of Title IV-D Child Support Cases Between State and Tribal Court	Please Review and provide comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 5.372	January 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Ann Gilmour, Attorney 415-865-4207 ann.gilmour@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair	
Tribal Court–State Court Forum	
Hon. Abby Abinanti, Cochair Hon. Dennis M. Perluss, Cochair	

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### **Executive Summary and Origin**

The Family and Juvenile Law Advisory Committee (committee) and the Tribal Court-State Court Forum (forum) propose amendments to rule 5.372 governing discretionary transfer of title IV-D child support cases from the state courts to tribal courts in cases of concurrent jurisdiction. The amendments would allow transfers from the tribal court to the state court, clarify the contents and procedures for motions to transfer, and modify the factors and procedures for ruling on motions to transfer. These proposed amendments are based on suggestions received from those involved in transfers between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court.

### **Background**

The Judicial Council adopted California Rules of Court, rule 5.372, effective January 1, 2014, in response to the need for consistent procedures for determining the orderly transfer of title IV-D child support cases from the state court to the tribal court when there is concurrent subject matter jurisdiction.

*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 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),<sup>1</sup> as amended by the Balanced Budget Act of 1997,<sup>2</sup> authorized the direct federal funding of tribal child support programs. Before the passage of PRWORA, tribal members seeking child support program services only had the option of applying to state title IV-D programs for assistance in establishing and enforcing child support orders. After the enactment of PRWORA, a number of tribes located outside of California applied for and received federal funding to develop tribal title IV-D child support programs. The first tribe located in California to receive federal funding for a tribal title IV-D child support program was the Yurok Tribe.

The Yurok Tribe began receiving grant funding from the federal Office of Child Support Enforcement for startup planning for a tribal child support program on August 1, 2011. The Yurok Tribe had comprehensive direct services available by August 1, 2013. The beginning of title IV-D funding for tribal child support programs created the need for a statewide rule of court to aid in the orderly transfer of appropriate cases from the state court to the tribal court. Rule 5.372 was adopted to meet this need. While the Yurok Tribe is the first tribe located in California to begin a federally funded child support program, rule 5.372 was drafted in anticipation that other tribes may develop such programs in the future.

Since implementation of rule 5.372 on January 1, 2014, over 40 cases have been considered for transfer between the state courts in Humboldt and Del Norte Counties and the Yurok Tribal Court. The Yurok Tribe intends to seek transfer of cases currently under the jurisdiction of state court in the following counties: Lake, Mendocino, Shasta, Siskiyou, and Trinity. In addition, at least one other tribe located in Southern California is expected to soon begin handling title IV-D child support cases.

Representatives of the state Department of Child Support Services, local county child support agencies, the tribal child support program, the tribal court, the state courts, and Judicial Council staff met to review the case transfer procedures at a cross-court educational exchange on October 26, 2016. Based on the experience with the transfers that have taken place so far, the participants made a number of suggestions to improve the transfer process, including amendments to rule 5.372 to streamline the process, reduce confusion, and ensure consistency and efficient use of court resources.

## **The Proposal**

This proposal would amend rule 5.372 to address the suggestions made by those involved in the transfers that have taken place to date.

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<sup>1</sup> Pub.L. No. 104-193 (Aug. 21, 1996) 110 Stat. 2105.

<sup>2</sup> Pub.L. No. 105-33 (Aug. 5, 1997) 111 Stat. 251.

### **Allowing transfers to state courts**

- Amending the title and subdivision (a) to clarify that a title IV-D child support case may be transferred between tribal and state courts in both directions. The prior rule had only envisioned a title IV-D child support case being transferred from the state court to the tribal court. However, the goal is to ensure that a title IV-D child support case will be in the jurisdiction (tribal or state) that is best able to serve the family and protect the best interests of the child. As a family's circumstances change, a case that may have initially been best served by tribal court jurisdiction may transition to one that is best served by state court jurisdiction. The Full Faith and Credit for Child Support Orders Act<sup>3</sup> mandates full faith and credit for child support orders between tribal and state courts, thereby contemplating movement in either direction. The mutual recognition of child support orders issued by a tribal or state court has aided the ability of these orders to be transferred from an issuing court to another court for effective enforcement of those orders;
- Adding new subdivision (i), which describes the state court procedure when a tribal court with concurrent jurisdiction decides it is in the child's best interest for the case to be heard in state court; and
- Revising subdivision (h) to add the exception in new subdivision (i), which authorizes the filing of a motion to transfer a case back to state court when a tribal court determines that it is not in the best interest of the child or the parties to retain jurisdiction.

### **Clarifying the contents and procedures for motions to transfer.**

Amending subdivision (e) to:

- Allow the state court to suggest transfer to tribal court on its own motion should circumstances suggest to the court that tribal court jurisdiction may be in the child's best interest;
- Require that certain information be included in the motion to transfer to tribal court. This information is fundamental to the court's determination of concurrent jurisdiction;
- Specify the forms of evidence that the court may rely on when making its ruling on a transfer motion;
- Recognize a presumption of tribal court jurisdiction if the child involved in the case is a tribal member or eligible for tribal membership. This is consistent with legal principles that generally recognize tribal subject matter jurisdiction over children who are members or eligible for membership in the tribe;<sup>4</sup>
- Specify the time limit within which any objection to the transfer to tribal court must be brought; and

---

<sup>3</sup> 28 U.S.C. § 1738(B).

<sup>4</sup> *Williams v. Lee* (1959) 358 U.S. 217; *Sanders v. Robinson* (9th Cir. 1988) 864 F.2d 630; *State v. Central Council of Tlingit and Haida Indian Tribes of Alaska* (Alaska 2016) 371 P.3d 255; 25 U.S.C. § 1911.

- Provide that the objecting party has the burden of proof to establish that there is good cause not to transfer the matter to tribal court. This is consistent with state implementation of the Indian Child Welfare Act of 1978 (ICWA);<sup>5</sup>

### **Modifying the factors and procedures for ruling on motions to transfer.**

Amending subdivision (f) to:

- Remove some of the factors to be considered in making a determination to transfer to tribal court. The original list of factors was drawn from a Wisconsin rule that governs the transfer of general civil matters where there is concurrent tribal and state court jurisdiction. Not all of those factors were relevant to the consideration of the more specific title IV-D child support case type. In particular, the nature of the action, the interests of the parties, and whether state or tribal law will apply are all the same in these child support cases. The inclusion of these on the list of factors to be considered was confusing and an inefficient use of court resources;
- Specify that the court may not consider the perceived adequacy of the tribal justice system in determining whether to transfer the case. This is consistent with state and federal law under the ICWA;<sup>6</sup> and
- Permit the state court judge to contact the tribal court judge to resolve procedural issues consistent with procedures contained in the Uniform Child Custody Jurisdiction and Enforcement Act and the Tribal Court Civil Money Judgment Act.<sup>7</sup>

### **Alternatives Considered**

The forum and committee considered taking no action at this time; however, it was decided that amending the rule now, based on the experience of existing users, would prevent the perpetuation of problems in additional counties and facilitate the transfer process as more tribes begin operating their title IV-D programs.

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

The forum and committee do not believe that there will be any costs associated with this proposal. In fact, to the extent that the proposal streamlines the process for these transfers it will reduce costs and court time.

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<sup>5</sup> 25 U.S.C. § 1901 et seq.; see Welf. & Inst. Code, § 305.5(c)(4).

<sup>6</sup> See Welf. & Inst. Code, § 305.5(c)(3); 25 C.F.R. § 23.118(c)(5) (2016).

<sup>7</sup> See Fam. Code, § 3410; Code Civ. Proc., § 1740.

## 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 courts require in order to implement this proposal? 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 an effective date six months from Judicial Council approval of this proposal provide sufficient time for implementation?
- How well would this proposal work in small courts? Large courts?

### Attachments and Links

1. Proposed amendments to Cal. Rules of Court, rule 5.372, at pages 6–8

Rule 5.372 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 5. Family and Juvenile Rules**

**Division 1. Family Rules**

**Chapter 10. Government Child Support Cases (Title IV-D Support Cases)**

**Rule 5.372. Transfer of title IV-D cases between ~~to a tribal court~~ and state court**

**(a) Purpose**

This rule is intended to define the procedure for transfer of title IV-D child support cases ~~from~~ between a California superior court ~~to~~ and a tribal court.

**(b)–(d) \* \* \***

**(e) Determination of concurrent jurisdiction by a superior court**

(1) The superior court may, on its own motion or on the motion of any party and after notice to the parties of their right to object, transfer a child support and custody provision of an action in which the state is providing services under ~~California~~ Family Code section 17400 to a tribal court, as defined in (a). This provision applies to both pre-judgment and post-judgment cases.

(2) The motion for transfer to a tribal court must include the following information:

- (A) Whether the child is a tribal member or eligible for tribal membership;
- (B) Whether one or both of the child’s parents is a tribal member or eligible for tribal membership;
- (C) Whether one or both of the child’s parents lives on tribal lands or in tribal housing, works for the tribe, or receives tribal benefits;
- (D) Whether there are other children of the obligor subject to child support obligations;
- (E) Any other factor supporting the child’s or parents’ connection to the tribe.

1 (3) When ruling on a motion to transfer, the superior court must first make a  
2 threshold determination that concurrent jurisdiction exists. Evidence to  
3 support this determination may include:

4  
5 (A) Evidence contained within the motion for transfer;

6  
7 (B) Evidence agreed to by stipulation of the parties; and

8  
9 (C) Other evidence submitted by the parties or by the tribe.

10  
11 The court may request that the tribal child support agency or the tribal court  
12 submit information concerning the tribe's jurisdiction.

13  
14 (4) There is a presumption of concurrent jurisdiction if the child is a tribal  
15 member or eligible for tribal membership. If concurrent jurisdiction is found  
16 to exist, the transfer to tribal court will occur unless a party has objected ~~in a~~  
17 ~~timely manner~~ within 20 days after service of notice. On the filing of a timely  
18 objection to the transfer, the superior court must conduct a hearing on the  
19 record considering all the relevant factors set forth in (f). The objecting party  
20 has the burden of proof to establish good cause not to transfer to tribal court.

21  
22 **(f) Evidentiary considerations**

23  
24 (1) In making a determination on the application for case transfer, the superior  
25 court must consider:

26  
27 (1) ~~The nature of the action;~~

28  
29 (2) ~~The interests of the parties;~~

30  
31 (A) The identities of the parties;

32  
33 (B) The convenience ~~of~~ to the parties and witnesses;

34  
35 (5) ~~Whether state or tribal law will apply;~~

36  
37 (C) The remedy available in the superior court or tribal court; and

38  
39 (D) Any other factors deemed necessary by the superior court.

40  
41 (2) In making a determination on the application for case transfer, the superior  
42 court may not consider the perceived adequacy of tribal justice systems.

1 (3) The superior court may, after notice to all parties, attempt to resolve any  
2 procedural issues by contacting the tribal court concerning a motion to  
3 transfer. The superior court must allow the parties to participate in, and must  
4 prepare a record of, any communication made with the tribal court judge.  
5

6 **(g) Order on request to transfer**  
7

8 If the superior court denies the request for transfer, the court must state on the  
9 record the basis for denying the request. If the superior court grants the request for  
10 transfer, it must issue a final order on the request to transfer including a  
11 determination of whether concurrent jurisdiction exists.  
12

13 **(h) Proceedings after order granting transfer**  
14

15 Once the superior court has granted the application to transfer, and has received  
16 confirmation that the tribal court has accepted jurisdiction, the superior court clerk  
17 must deliver a copy of the entire file, including all pleadings and orders, to the clerk  
18 of the tribal court. With the exception of a filing by a tribal court as described by  
19 subdivision (i) of this rule, the superior court may not accept any further filings in  
20 the state court action in relation to the issues of child support and custody that were  
21 transferred to the tribal court.  
22

23 **(i) Transfer of proceedings from tribal court**  
24

25 (1) If a tribal court determines that it is not in the best interest of the child or the  
26 parties for the tribal court to retain jurisdiction of a child support case, the  
27 tribe may, upon noticed motion to all parties and the state child support  
28 agency, file a motion to transfer the case to the jurisdiction of the superior  
29 court along with copies of the tribal court's order transferring jurisdiction and  
30 the entire file.  
31

32 (2) The superior court must notify the tribal court upon receipt of the materials  
33 and the date scheduled for the hearing of the motion to transfer.  
34

35 (3) If the superior court has concurrent jurisdiction it may not reject the case.  
36  
37

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Family Law: Revoke Summary Dissolution Form FL-820

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Bonnie R. Hough, 415-865-7668, [bonnie.hough@jud.ca.gov](mailto:bonnie.hough@jud.ca.gov); 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: Approved December 15, 2016.

Project description from annual agenda: FL-800 Joint Petition for Summary Dissolution:

Update to reflect change in cost of living per Family Code section 2400(b) as a technical change.

*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.)

The rationale for separating forms FL-800, FL-810, and FL-820 into an invitation to comment and a Judicial Council report is provided in the attached invitation to comment.

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## INVITATION TO COMMENT

SPR17-\_\_

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Title	Action Requested
Family Law: Revoke Summary Dissolution Form FL-820	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revoke form FL-820	January 1, 2018
Proposed by	Contact
Family and Juvenile Law Advisory Committee 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 revoking one summary dissolution form, which may no longer be required given the passage of time and the fact that the form was adopted specifically for joint petitions for summary dissolution filed before January 1, 2011.

### The Proposal

The Judicial Council last revised the form, effective January 1, 2012, to conform to amendments made to Family Code section 2403 by Assembly Bill 939, which required that the court enter a judgment of dissolution six months after the petition for summary dissolution was filed (instead of requiring a party to request the judgment). Form FL-820 was revised to note that it should be used in cases filed before January 1, 2011, and a new form, *Judgment of Dissolution of Notice of Entry of Judgment* (form FL-825), would be used in cases filed after January 1, 2011.

The committee believes that the form is no longer needed. Because the form is required for cases filed before January 1, 2011, and more than six years have passed, presumably courts have either issued judgments on summary dissolution petitions filed before that date or dismissed the cases as required by statute.

### Alternatives Considered

The committee considered not circulating form FL-820 for comment, but, instead, including it in a technical report to the Judicial Council with two other summary dissolution forms. *Joint*

*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.*

*Petition for Summary Dissolution* (form FL-800) and *Summary Dissolution Information* (form FL-810) must be revised this year under Family Code section 2400(b) to reflect an increase in the cost of living based on changes to the California Consumer Price Index (CCPI). Specifically, the dollar limits on the parties' community property and separate property assets must increase from \$41,000 to \$43,000 on forms FL-800 and FL-810. The committee decided not to include form FL-820 in the technical report so that courts and family law professionals could provide input about whether the form is still being used in summary dissolution cases.

The committee also considered circulating all three forms for public comment without seeking specific comment about the adjustments made to forms FL-800 and FL-810. However, this approach would delay revising the dollar amounts on forms FL-800 and FL-810 until January 1, 2018, when in previous cycles the mandatory adjustments had taken effect six months earlier, on July 1 of the odd-numbered year.

Finally, the committee considered drafting two separate proposals (separating the two summary dissolution forms with dollar amounts from the form proposed to be revoked) and not requiring the former proposal for technical changes to circulate for comment. The committee decided to take this approach because it allows for public comment as to FL-820. It also allows forms FL-800 and FL-810 to be considered by the Judicial Council for an effective date of July 1, 2017, instead of delaying the changes to January 1, 2018.

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

Implementation may require courts to incur standard reproduction costs.

### **Attachments and Links**

Form FL-820, at pages 3-4

## **Request for Specific Comments**

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- Should form FL-820 be revoked, effective January 1, 2018?
- 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 three 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?
- What is the impact of this proposal on low- and moderate-income litigants?

PARTY WITHOUT ATTORNEY OR 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> _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
<b>MARRIAGE OF</b> HUSBAND: _____ WIFE: _____	
<b>REQUEST FOR JUDGMENT, JUDGMENT OF DISSOLUTION OF MARRIAGE, AND NOTICE OF ENTRY OF JUDGMENT</b>	CASE NUMBER: _____

1. The *Joint Petition for Summary Dissolution* (form FL-800) was filed on *(date)*:  
*(Use this form ONLY if the Joint Petition for Summary Dissolution (form FL-800) was filed before January 1, 2011. If it was filed after January 1, 2011, use Judgment of Dissolution and Notice of Entry of Judgment (form FL-825) instead.)*
2. No notice of revocation has been filed, and the parties have not become reconciled.
3. I request that judgment of dissolution of marriage be
  - a.  entered to be effective now.
  - b.  entered to be effective (nunc pro tunc) as of *(date)* \_\_\_\_\_ for the following reason:

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 HUSBAND OR WIFE)

4. Husband  Wife  who did **not** request that his or her own former name be restored when he or she signed the joint petition, now requests that it be restored. The applicant's former name is:

Date: \_\_\_\_\_  
 \_\_\_\_\_  
(TYPE OR PRINT NAME) \_\_\_\_\_  
(SIGNATURE OF PARTY WISHING TO HAVE HIS OR HER NAME RESTORED)

*(For Court Use Only)*  
**JUDGMENT OF DISSOLUTION**

**THE COURT ORDERS**

5. A judgment of dissolution of marriage will be entered, and the parties are restored to the status of unmarried persons.
  - a.  The judgment of dissolution of marriage will be entered nunc pro tunc as of *(date)*:
  - b.  Wife's former name is restored *(specify)*:
  - c.  Husband's former name is restored *(specify)*:

Husband and wife must comply with any agreement attached to the petition.

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

HUSBAND: _____	CASE NUMBER: _____
WIFE: _____	

**NOTICE:** Dissolution may automatically cancel the rights of a spouse under the other spouse's will, trust, retirement benefit plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar instrument. It does not automatically cancel the rights of a spouse as beneficiary of the other spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement benefit plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

**NOTICE OF ENTRY OF JUDGMENT**

6. You are notified that a judgment of dissolution of marriage was entered on (date):

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

**CLERK'S CERTIFICATE OF MAILING**

I certify that I am not a party to this cause and that a true copy of the *Notice of Entry of Judgment* 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

HUSBAND'S ADDRESS

WIFE'S ADDRESS


TO BE REVOKED

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** February 24, 2017

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

Family Law: Technical Changes to Summary Dissolution Forms (revise forms FL-800 and FL-810)

*Committee or other entity submitting the proposal:*

Family and Juvenile Law Advisory Committee

*Staff contact (name, phone and e-mail):* Bonnie R. Hough, 415-865-7668, [bonnie.hough@jud.ca.gov](mailto:bonnie.hough@jud.ca.gov); 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: Approved December 15, 2016.

Project description from annual agenda: FL-800 Joint Petition for Summary Dissolution:

Update to reflect change in cost of living per Family Code section 2400(b) as a technical change.

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

Family Code section 2400(b) requires that on January 1 of each odd-numbered year, the dollar limitations on items indicated in the summary dissolution forms reflect any increase in the California Consumer Price Index. Changes required to the forms are normally published effective July 1. Delaying the revision of the dollar amounts on forms FL-800 and FL-810 until January 1, 2018, means that these forms would be legally inaccurate for about one year.

**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](http://www.courts.ca.gov)

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 24

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Title	Agenda Item Type
Family Law: Technical Changes to Summary Dissolution Forms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms FL-800 and FL-810	July 1, 2017
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	February 21, 2015
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Mark A. Juhas, Cochair	Gabrielle D. Selden, 415-865-8085 <a href="mailto:gabrielle.selden@jud.ca.gov">gabrielle.selden@jud.ca.gov</a>

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### **Executive Summary**

The Family and Juvenile Law Advisory Committee recommends technical revisions to two family law summary dissolution forms. The technical changes are mandated by Family Code section 2400 to reflect an increase in the cost of living based on changes to the California Consumer Price Index.

### **Recommendation**

The Family and Juvenile Law Advisory Committee, recommends that the Judicial Council, effective July 1, 2017:

1. Approve and adopt the calculations attached at page 4, which demonstrate an increase required to the maximum dollar amounts for community and separate property assets in summary dissolution forms FL-800 and FL-810; and

2. Revise forms FL-800 and FL-810 to reflect an increase in the maximum limits for community and separate property assets under Family Code section 2400(a)(7) <sup>1</sup> from \$41,000 to \$43,000.

The revised forms are attached at pages 5–28.

### **Previous Council Action**

Effective July 1, 2015, the Judicial Council revised forms FL-800 and FL-810 to reflect an increase solely in the maximum limits for community and separate property assets under Family Code section 2400(a)(7), from \$40,000 to \$41,000.

### **Rationale for Recommendation**

Family Code section 2400(b) requires that on January 1 of each odd-numbered year, the dollar limitations on items indicated in Family Code section 2400(a)(6) and (a)(7) be adjusted to reflect any change in the value of the dollar.<sup>2</sup> Section 2400 (b) requires that the Judicial Council compute and publish the adjusted amounts. The adjustments are computed by multiplying the base amount by the percentage change in the California Consumer Price Index (the calculation is attached at page 4). The results are then rounded to the nearest thousand dollars and published in summary dissolution forms FL-800 and FL-810.

Increases in the annual averages of the California Consumer Price Index between 2014 and 2016 require a \$2,000 increase in the total fair market value of community and separate property assets for summary dissolution actions. Currently, to use the summary dissolution process, the parties' community property and separate property assets must not exceed \$41,000 each. Those limits would increase to \$43,000 to reflect an increase in the cost of living. (However, it results in no change to the currently published \$6,000 limit for unpaid community debts.) To reflect the change:

- *Joint Petition for Summary Dissolution* (form FL-800) would be modified to increase the limitation on assets from \$41,000 to \$43,000; and
- The instructional booklet titled *Summary Dissolution Information* (form FL-810) would be modified to reflect the changes in form FL-800.<sup>3</sup> The Spanish translation of the booklet (form FL-810 S) would also be updated.

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<sup>1</sup> The total fair market value of community property and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan.

<sup>2</sup> Since the January 1 figures only become available in February, these bi-annual modifications are made for the July 1, forms cycle.

<sup>3</sup> The changes to form FL-810—on pages 7, 11, and 13–17, and 21 are highlighted in the attachment.

## **Comments, Alternatives Considered, and Policy Implications**

This proposal was not circulated for comment. Under rule 10.22(d)(2) of the California Rules of Court, the adjustments proposed to forms FL-800 and FL-810 are minor substantive changes and are unlikely to create controversy. In addition, the adjustments to forms FL-800 and FL-810 are required by statute.

Given the statutory requirement relating to the summary dissolution forms, no alternative actions were considered. Implementation of the revisions will require courts to incur standard reproduction costs for the forms.

## **Attachments and Links**

1. Forms FL-800 and FL-810, at pages 5-28

**Asset and Debt Limits in Summary Dissolution Proceedings  
(Fam. Code, § 2400)**

**Formula**

Under Family Code section 2400(b), the dollar limits for community property debts and community and separate property assets in actions for summary dissolution shall be adjusted by multiplying the base amount by the percentage change in the California Consumer Price Index as compiled by the Department of Industrial Relations, with the result rounded to the nearest thousand dollars.

$$\text{Adjusted limit} = \left[ \frac{\text{CCPI(AA) 2016} - \text{CCPI(AA) 2014}}{\text{CCPI(AA) 2014}} + 1 \right] \times \text{Published limit}$$

**Definition**

CCPI(AA) is the California Consumer Price Index, Annual Average, as established by the California Department of Industrial Relations.

**July 1, 2017, calculation and adjustment for community debts**

Under Family Code section 2400(a)(6), effective July 1, 2017, there is no change to the maximum dollar amount for unpaid obligations incurred by either or both of the parties after their date of marriage, excluding the amount of any unpaid obligation with respect to automobile community debts. The calculation is as follows:

$$\$6,255.51 = \left[ \frac{255.303 - 246.055}{246.055} + 1 \right] \times \$6,000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, remains the same as the current published limit, at \$6,000.

**July 1, 2017, calculation and adjustment for community and separate property assets**

Under Family Code section 2400(a)(7), effective July 1, 2017, there is a \$2,000 increase in the total fair market value of community and separate property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan. The calculation is as follows:

$$\$42,541.00 = \left[ \frac{255.303 - 246.055}{246.055} + 1 \right] \times \$41,000.00$$

The adjusted limit under Family Code section 2400(b), when rounded to the nearest thousand dollars, increases the current published limit to \$43,000.



PETITIONER 1: PETITIONER 2:	CASE NUMBER:
--------------------------------	--------------

13. (Check whichever statement is true.)
- a.  We have no community assets or liabilities.
  - b.  We have signed an agreement listing and dividing all our community assets and liabilities and have signed all the papers necessary to carry out our agreement. A copy of our agreement is attached to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825).
14. Irreconcilable differences have caused the irremediable breakdown of our marriage and/or domestic partnership, and each of us wishes to have the court dissolve our marriage and/or domestic partnership without our appearing before a judge.
15. a.  Petitioner 1 desires to have his or her former name restored. That name is (specify):  
 b.  Petitioner 2 desires to have his or her former name restored. That name is (specify):
16. We each give up our rights to appeal and to move for a new trial after the effective date of our *Judgment of Dissolution*.
17. **Each of us forever gives up any right to spousal or partner support from the other.**
18. We each agree to keep the court and each other informed of any change of mailing address or phone number occurring within six months from the filing of this joint petition using the *Notice of Change of Address or Other Contact Information* (form MC-040).
19. We are submitting the original and three copies of the proposed *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and two stamped envelopes together with this petition. One envelope is addressed to Petitioner 1 and the other to Petitioner 2.
20. We agree that this matter may be determined by a commissioner sitting as a temporary judge.

21. **Mailing address of Petitioner 1**

22. **Mailing address of Petitioner 2**

Name:  
 Address:  
  
 City:  
 State:  
 Zip Code:

Name:  
 Address:  
  
 City:  
 State:  
 Zip Code:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ \_\_\_\_\_

(SIGNATURE OF PETITIONER 1)

I declare under penalty of perjury under the laws of the State of California that the foregoing and all attached documents are true and correct.

Date:

▶ \_\_\_\_\_

(SIGNATURE OF PETITIONER 2)

**NOTICES**

**Your marriage and/or domestic partnership will end six months from the date of filing this joint petition. Both petitioners will receive a stamped copy from the court of the *Judgment of Dissolution and Notice of Entry of Judgment* (from FL-825) stating the effective date of your dissolution. Until the effective date specified on form FL-825 for the dissolution of your marriage and/or domestic partnership, either one of you can stop this joint petition by filing a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). If you stop this joint petition, you will STILL be married or in a domestic partnership.**

Dissolution may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar instrument. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit card accounts, other credit accounts, insurance policies, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or domestic partner or a court order. (See Fam. Code, §§ 231–235.)

# SUMMARY DISSOLUTION INFORMATION

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This booklet is available in English and Spanish from the office of the court clerk in the superior court of each county in California, or at [www.courts.ca.gov/selfhelp.htm](http://www.courts.ca.gov/selfhelp.htm).

Este folleto puede obtenerse en inglés y en español en la Dirección de Registro Público del Condado (Office of the Court Clerk) o en la Corte Superior (Superior Court) de cada condado en el estado de California o en el sitio [www.sucorte.ca.gov](http://www.sucorte.ca.gov).

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## I. WHAT IS THIS BOOKLET ABOUT?

This booklet describes a way to end a marriage, a domestic partnership, or both through a kind of divorce called **summary dissolution**.

The official word for **divorce** in California is **dissolution**. There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **regular dissolution**.

Summary dissolution is a shorter and easier way. But not everybody can use it. Briefly, a summary dissolution is possible for couples who

1. have no children together;
2. have been married and/or in a domestic partnership five years or less (this means that the time between the date you married or registered your domestic partnership and the date you separated from your spouse or partner is five years or less);
3. do not own very much;
4. do not owe very much;
5. do not want spousal or partner support from each other; and
6. have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to or in a domestic partnership with each other.

With this procedure, you will not have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage or domestic partnership. See page 19 for more details about how a lawyer can help you.

For a summary dissolution, you prepare and file a *Joint Petition for Summary Dissolution* (form FL-800), together with a property settlement agreement,\* with the superior court clerk in your county. You will also prepare and turn in a *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825). Your divorce, ending your marriage and/or your domestic partnership, will be final six months after you file your *Joint Petition for Summary Dissolution*. During the six months while you wait for your divorce to become final, either of you can stop the process of summary dissolution if you change your mind. One of you can file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830), and that will stop the divorce. If either one of you still wants to get divorced, then that person will have to file for a regular dissolution with a *Petition—Marriage/Domestic Partnership* (form FL-100) unless you both agree to start a new summary dissolution process.

**IMPORTANT!** Domestic partners who qualify for a summary dissolution can choose to use the process described in this booklet OR a special summary dissolution for domestic partners through the California Secretary of State. You can find the California Secretary of State forms at [www.sos.ca.gov](http://www.sos.ca.gov). **There is no filing fee for this process.** If you choose to file to terminate your domestic partnership through the Secretary of State, do not use this guide.

This booklet will tell you

1. who can use the summary dissolution procedure;
2. what steps you must take to get a summary dissolution;
3. when it would help to see a lawyer; and
4. what risks you take when you use this procedure rather than the regular dissolution procedure.

If you wish to use the summary dissolution procedure, you must, at the time you file the joint petition, sign a statement that says you have read and understood this booklet. It is important for you to read the whole booklet very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. If you decide you want to stop the summary dissolution process and revoke your petition, it will tell you how to do that.

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### SPECIAL WARNING

If you are an undocumented person who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or to a lawful permanent resident, obtaining a dissolution within two years of your marriage may lead to your deportation. You should consult a lawyer before obtaining a divorce.

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\* A property settlement agreement is an agreement that the two of you write or have someone write for you after you fill out the worksheets in this booklet. The agreement spells out how you will divide what you own and what you owe.

## II. SOME TERMS YOU NEED TO KNOW

In the following pages, you will often see the terms *community property*, *separate property*, and *community obligations*. Those terms are explained in this section.

As a married couple or domestic partners, the two of you are, in the eyes of the law, a single unit. There are certain things that you **own together** rather than separately. And there may be certain debts that you **owe together**. If one of you borrows money or buys something on credit, the other one can be made to pay.

If your marriage or domestic partnership breaks up, you become two separate individuals again. Before that can happen, you have to decide what to do with the things you *own* as a couple and the money you *owe* as a couple.

The laws that cover these questions contain the terms *community property*, *separate property*, and *community obligations*. To understand what these terms mean, you should have a clear idea of the **length of time you lived together as spouses or domestic partners**. This is the period between the day you married or registered your domestic partnership and the day you separated.

It may not be easy to decide exactly when you separated. In most cases, the day of the separation is the day the couple stopped living together. However, you may want to choose the day when you definitely decided to get a divorce and took some action to show this (like telling your spouse or partner that you wanted a divorce).

### Community Property

Community property is everything spouses or registered domestic partners **own together**.

In most cases that includes

1. money you now have that either of you earned during the time you were living together as spouses or partners; and
2. anything either of you bought with money earned during that period. It does not matter if only one of you earned or spent the money.

### Separate Property

Separate property is everything spouses or registered domestic partners **own separately from each other**.

In most cases that includes

1. anything either of you owned before you got married or registered your domestic partnership;
2. anything either of you earned or received after your separation; and
3. anything either of you received, as a gift or by inheritance, at any time.

### Community Obligations

Community obligations are the debts spouses or registered domestic partners **owe together**.

In most cases that includes anything you still owe on any debts either of you acquired during the time you were living together as spouses or registered domestic partners. (For instance, if you bought furniture on credit while you were married or domestic partners and living together, the unpaid balance is a part of your community obligations.) It usually does not matter if the debt was in the name of one spouse or domestic partner only, like on a credit card.

**NOTE:** If you have any questions about your separation date or about your property, it would be good to see a lawyer as these issues can be complicated. Also, if you lived together before your marriage or domestic partnership, you may wish to see a lawyer about possible additional rights either of you may have.

### III. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

You can use the summary dissolution procedure only if **all** of the following statements are true about you at the time you file the *Joint Petition for Summary Dissolution* (form FL-800). Check this list very carefully. If even *one* of these statements is not true for you, you cannot get a divorce in this way.

- \_\_\_ 1. We have both read this booklet, and we both understand it.
- \_\_\_ 2. We have been married or registered as domestic partners five years or less between the date that we got married and/or registered our domestic partnership and the date we separated. (*Note that if you are trying to end both a marriage AND a domestic partnership at the same time through a summary dissolution, both your marriage and domestic partnership must have lasted five years or less.*)
- \_\_\_ 3. No children were born to the two of us together before or during our marriage and/or domestic partnership.
- \_\_\_ 4. We have no adopted children under 18 years of age.
- \_\_\_ 5. Neither one of us is pregnant.
- \_\_\_ 6. Neither of us owns any part of any land or buildings.
- \_\_\_ 7. Our community property is not worth more than \$43,000. (Do not count cars in this total.)
- \_\_\_ 8. Neither of us has separate property worth more than \$43,000. (Do not count cars in this total.)
- \_\_\_ 9. The total of our community obligations (other than cars) is \$6,000 or less.\*\*

**For deciding on statements 7, 8, and 9, use the guide on pages 5–11.**

- \_\_\_ 10. a. At least one of us has lived in California for the past six months or longer *and* has lived in the county where we are filing for dissolution for the past three months or longer; or
  - b. We are only asking to end a domestic partnership registered in California; or
  - c. We are the same sex and were married in California but are not residents of California. Neither of us lives in a place that will allow us to divorce. We are filing this case in the county in which we married.
- \_\_\_ 11. We have prepared and signed an agreement that states how we want our possessions and debts to be divided between us (or states that we have no community property or community obligations).
- \_\_\_ 12. We have both signed the joint petition and all other papers needed to carry out this agreement.
- \_\_\_ 13. Together with the joint petition, we will turn in the judgment of dissolution forms and two self-addressed stamped envelopes to the superior court.
- \_\_\_ 14. We both want to end the marriage and/or domestic partnership because of serious, permanent differences.
- \_\_\_ 15. We have both agreed to use the summary dissolution procedure rather than the regular dissolution procedure.
- \_\_\_ 16. We are both aware of the following facts:
  - a. There is a six-month waiting period, and either of us can stop the divorce at any time during this period.
  - b. The date that appears on the *Judgment of Dissolution of Marriage and Notice of Entry of Judgment* (form FL-825) we receive from the court as the "effective date" of the dissolution is the date our divorce will be final, unless one of us has asked to stop the divorce prior to that effective date.
  - c. After the dissolution becomes final, neither of us has any right to expect money or support from the other except that which is included in the property settlement agreement.
  - d. By choosing the summary dissolution procedure, we give up certain legal rights that we would have if we had used the regular dissolution procedure. These rights are explained on page 4.

#### IV. AN IMPORTANT DIFFERENCE BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION

With a regular dissolution, either spouse or partner can ask for a court hearing or trial. And with a regular dissolution, if either spouse or partner is unhappy with the judge's final decision, it is possible to challenge that decision. This can be done, for example, by asking for a new trial. It is also possible to **appeal** the decision by taking the case to a higher court.

**With a summary dissolution, there is no trial or hearing.** Couples who choose this method of getting a divorce do not have the right to ask for a new trial (since there is no trial) or the right to appeal the case to a higher court.

There are, however, some cases in which a divorce agreement under a summary dissolution can be challenged. You will have to see a lawyer about this. The court *may* have the power to set aside the divorce if you can show that one of the following things happened:

1. **You were treated unfairly in the property settlement agreement.**

This is possible if you find out that the things you agreed to give your spouse or partner were much more valuable than you thought at the time of the dissolution.

2. **You went through the dissolution procedure against your will.**

This is possible if you can show that your spouse or partner used threats or other kinds of unfair pressure to get you to go along with the divorce.

3. **There are serious mistakes in the original agreement.**

Some kinds of mistakes can make the dissolution invalid, but you will have to go to court to prove the mistakes. It may be that one or both of you had a lot of property that you had forgotten about when you drew up the property settlement agreement. Or maybe a bank account mentioned in the agreement had much more money or much less money in it than your agreement states.

4. **Neither of you complied with preliminary disclosure requirements.**

California law requires that you fully share all information about your property and debts as well as your income. You have to share this information before you sign your property settlement agreement.

In summary dissolution cases, this means that you and your spouse or domestic partner must each complete and exchange: (1) an *Income and Expense Declaration* (form FL-150), (2) all tax returns you filed in the last two years, and (3) the property worksheets on pages 7, 9, and 11 (or a *Declaration of Disclosure* (form FL-140 and either a *Schedule of Assets and Debts* (form FL-142) or a *Property Declaration* (form FL-160)).

In addition, each spouse or domestic partner must complete and give to the other spouse or partner a written statement about any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated.

Correcting mistakes and unfairness in a summary dissolution proceeding can be expensive, time-consuming, and difficult. It is very important for both of you to be honest, cooperative, and careful when you or your lawyers do the paperwork for the dissolution.

## V. HOW DO YOU FIGURE OUT THE VALUE OF YOUR PROPERTY AND THE AMOUNT OF YOUR DEBTS?

Section III, page 3, lists statements that must be true if you want to use the summary dissolution procedure.

**Statement 7 reads: “Our community property is not worth more than \$43,000.”**

Your community property is the money and things you own jointly as spouses or domestic partners. This was explained on page 2. The value of your community property is determined by adding together (1) the amount of **money** you have as community property and (2) the “fair market value” of the **possessions** you have as community property.

The **fair market value** is an estimate of the amount of money you could get if you sold these items to a stranger—for example, through a classified ad in the newspaper. It does **not** mean what you paid for it originally, and it does **not** mean how much it would cost you to replace it if you lost it.

One way of estimating the fair market value of your goods is to use prices for equivalent items in other people's classified ads for secondhand goods.

Three kinds of items go into figuring out your community property:

1. Money (as in bank accounts and credit union accounts);
2. Things you own outright (furniture that is already paid for, for example); and
3. Things you are buying on credit.

When you include things you still owe money on, subtract the amount of money you still owe on them from the fair market value.

You should not include the value of a car in this list.

**Statement 8 reads: “Neither of us has separate property worth more than \$43,000.”**

Separate property is property that each spouse or partner owns separately. The term is explained on page 2. Separate property includes the same kinds of things used in determining community property. And again, you should not include cars in this list.

**Statement 9 reads: “The total of our community obligations (other than cars) is \$6,000 or less.”**

Your community obligations are the debts that you and your spouse or partner owe jointly. The term is explained on page 2. List all the debts you have that you took on while you were living together as spouses or domestic partners. If you borrowed money before you got married or registered your domestic partnership, you do **not** have to include that in your community obligations. If you bought furniture on credit after you got married or registered your domestic partnership but before you separated, you **have to** include the amount of money you still owe on the furniture. If you bought a stereo after you separated, you do **not** have to include that.

Do not include car loans in this list.

**NOTICE:** The law for summary dissolution allows you to leave out cars when you figure out whether you are **eligible** for this kind of divorce. But if you do have cars as part of your community property, you still have to decide who is going to own them (and who is going to pay for them) after your divorce. You must include them in your property settlement agreement.

**Worksheets to help you figure out these amounts are found on pages 6–11.** You may use the following forms in this booklet to figure out the total of your community and separate property assets and obligations: (1) the worksheet on pages 7 (Value of Separate Property), (2) the worksheet on page 9 (Value and Division of Community Property), and (3) the worksheet on page 11 (Community Obligations and Their Division). Sample forms showing how to fill out those worksheets are on pages 6, 8, and 10.

PETITIONER 1: Pat	CASE NUMBER:
PETITIONER 2: Chris	

**VI. SAMPLE WORKSHEET FOR DETERMINING VALUE OF SEPARATE PROPERTY**

This worksheet will help you determine whether you are eligible to use the summary dissolution procedure. The total fair market value of the **separate property of one spouse/partner** cannot be more than \$43,000. The total fair market value of the **separate property of the other spouse/partner** cannot be more than \$43,000. Separate property is anything that either of you owned or earned before you got married or registered your domestic partnership, anything you earned or bought after your separation, and anything that was given to just one of you as a gift during your marriage or domestic partnership. Do not include cars.

*Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)*

<b>A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.</b>			<b>Pat's Property—Fair Market Value</b>	<b>Chris's Property—Fair Market Value</b>
<b>Item</b>				
Credit union savings—Pat (before marriage)			420	
Savings bonds—Chris (bought before marriage)				250
Pension plan benefits—Pat (before marriage and after separation)			1500	
Pension plan benefits—Chris (before marriage and after separation)				1300
<b>B. Items owned outright</b>				
<b>Item</b>				
Clothes—Pat (bought before marriage)			350	
Stocks—Pat (birthday present from father)			375	
Furniture—Pat (owned before marriage)			460	
Camera—Chris (owned before marriage)				229
Wristwatch—Chris (bought after separation)				142
Clothes—Chris (bought after separation)				250
<b>C. Items being bought on credit</b>				
<b>Item</b>	<b>Fair Market Value</b>	<b>Minus What's Owed =</b>		
TV set—Pat (after separation)	400	350	50	
Clothes—Pat (after separation)	220	170	50	
<b>GRAND TOTALS: Pat and Chris SEPARATE PROPERTY</b>			3205	2171



PETITIONER 1: Pat	CASE NUMBER:
PETITIONER 2: Chris	

**VI. SAMPLE WORKSHEET FOR DETERMINING VALUE AND DIVISION OF COMMUNITY PROPERTY**

*Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information.)*

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than \$43,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.				Pat Receives	Chris Receives	
Item	Amount					
Savings account	150			150		
Life insurance (cash value)	250			250		
Pension plan—Pat	600			600		
Pension plan—Chris	500				500	
Checking account	180				180	
<b>Subtotal A</b>				1000	680	
B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)						
Item	Fair Market Value			Pat Receives	Chris Receives	
Furniture & furnishings— Pat's apartment	775			775		
Furniture & furnishings—Chris's apartment	300				300	
Terriers season tickets	285				285	
Savings bonds	200			200		
Jewelry—Pat	200			200		
Pet parrot and cage	40				40	
<b>Subtotal B</b>				1175	625	
C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)						
Item	Fair Market Value	Minus Amount Owed	=	Net Fair Market Value	Pat Receives	Chris Receives
Stereo set	305	150	=	155		155
Color television	400	100	=	300		300
Golf clubs	350	50	=	300		300
<b>Subtotal C</b>				755	0	755
<b>Grand total value of community property = A + B + C</b>				4235	2175	2060

PETITIONER 1:	CASE NUMBER:
PETITIONER 2:	

**VI. WORKSHEET FOR DETERMINING VALUE AND  
DIVISION OF COMMUNITY PROPERTY**

This side of the sheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The grand total value of your community property cannot be more than \$43,000.

This side of the sheet will help you decide on a fair division of your property. It will help you prepare your property settlement agreement.

A. Bank accounts, credit union accounts, retirement funds, cash value of insurance policies, etc.		PETITIONER 1 Receives	PETITIONER 2 Receives
Item	Amount		
<b>Subtotal A</b>			
B. Items you own outright (for example, stocks and bonds, sports gear, furniture, household items, tools, interests in businesses, jewelry; do not include cars)			
Item	Fair Market Value	PETITIONER 1 Receives	PETITIONER 2 Receives
<b>Subtotal B</b>			
C. Items you are buying on credit (for example, stereo equipment, appliances, furniture, tools; do not include cars)			
Item	Fair Market Value	Minus Amount Owed =	Net Fair Market Value
<b>Subtotal C</b>			
<b>Grand total value of community property = A + B + C</b>			

PETITIONER 1: Pat PETITIONER 2: Chris	CASE NUMBER:
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### VI. SAMPLE WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION

*Note: The information on this form is for an imaginary couple, Pat and Chris, who are married. (When you fill out your worksheet, use your information and make sure you indicate if you are married, in a domestic partnership, or both.)*

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than \$6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement**.

	Amount Owed	Pat Will Pay	Chris Will Pay
Stereo set	150		150
Color TV	100		100
Golf clubs	50		50
Dr. R.C. Himple	74		74
Sam's Drugs	32		32
College loan	500		500
Cogwell's charge account	275	275	
Mister Charge account	68		68
Green's Furniture	123	123	
Dr. Irving Roberts	37	37	
Pat's parents	150	150	
<b>TOTAL</b>	1559	585	974

**Pat's Share  
of Community  
Obligations**

**Chris's Share  
of Community  
Obligations**

PETITIONER 1: PETITIONER 2:	CASE NUMBER:
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**VI. WORKSHEET FOR DETERMINING COMMUNITY OBLIGATIONS AND THEIR DIVISION**

This side of the worksheet will help you determine whether you are **eligible** to use the summary dissolution procedure. The total amount of your community obligations (debts) cannot be more than \$6,000. Do not include car loans. Be sure you include any other debts you took on while you were living together as spouses or domestic partners. List the amount you owe on the items from your **Worksheet for Determining Value and Division of Community Property**. Then add all other debts and bills, including loans, charge accounts, medical bills, and taxes you owe.

This side of the worksheet will help you decide on a fair way to divide up your community obligations. You will use this information in preparing a **property settlement agreement**.

	Amount Owed	Petitioner 1 Will Pay	Petitioner 2 Will Pay
<b>TOTAL</b>			

<b>Petitioner 1 Share of Community Obligations</b>	<b>Petitioner 2 Share of Community Obligations</b>
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## **VII. WHAT SHOULD BE INCLUDED IN THE PROPERTY SETTLEMENT AGREEMENT?**

A property settlement agreement should contain at least five parts:

### **I. Preliminary Statement**

This part identifies the spouses or domestic partners, states that the marriage and/or domestic partnership is being ended, and states that both spouses or partners agree on the details of the agreement.

### **II. Division of Community Property**

This part has two sections:

1. What the one spouse or partner receives; and
2. What the other spouse or partner receives.

### **III. Division of Community Obligations**

This part has two sections:

1. The amount one spouse or partner must pay and whom he or she must pay it to.
2. The amount the other spouse or partner must pay and whom he or she must pay it to.

### **IV. Waiver of Spousal Support**

This part states that each spouse or partner gives up all rights of financial support from the other.

### **V. Date and Signature**

Both spouses or partners must write the date and sign the agreement.

**An example of a property settlement agreement is found on pages 13–15.**

## VIII. SAMPLE PROPERTY SETTLEMENT AGREEMENT

Below is a sample of an acceptable **property settlement agreement**. You may use it as a model for your own agreement if you wish. You can find a fill-in-the-blanks version of this agreement at [www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp) in the section on summary dissolution.

- The parts that are underlined will fit most cases. You can copy these parts for your own agreement. Since many of the words have special meanings in the law, you may wish to talk to a lawyer if you want to change the words.
- The parts printed in regular type (not underlined) are based on an imaginary couple. You will need to replace these parts with items that apply to your situation.
- The numbered notes in *italics* in the right-hand column are **not** part of the agreement. They are there to help you understand it. (You will not need the small <sup>1</sup> and <sup>2</sup> in the sample for your agreement.)
- The sample below is for a married couple, so it refers to marriage. If you are ending a domestic partnership, you should say that in your agreement. If you are ending both a marriage and a domestic partnership with the same person, say both and write in the dates of both your marriage and the registration of your domestic partnership.

Remember, you can divide the items any way you want. As long as you both agree, the court will accept it. If you cannot agree about the division of your property and debts, you should file a regular dissolution.\*

### PROPERTY SETTLEMENT AGREEMENT

1. We are Chris P. Smedlap, hereafter called Chris,<sup>1</sup> and Pat T. Smedlap, hereafter called Pat.<sup>1</sup> We were married on October 7, 2015, and separated on December 5, 2016. Because irreconcilable differences<sup>2</sup> have caused the permanent breakdown of our marriage, we have made this agreement together to settle once and for all what we owe to each other and what we can expect from each other. Each of us states here that nothing has been held back and that we have honestly included everything we could think of in listing the money and goods that we own; and each of us states here that we believe the other has been open and honest in writing this agreement. Each of us agrees to sign and exchange any papers that might be needed to complete this agreement.

<sup>1</sup> *If you prefer, you can also write "hereafter called "Wife" or "Husband" or "Partner A" or "Partner B" whichever applies. Just make sure it is clear to whom you are referring.*

<sup>2</sup> *This means there are problems in your marriage or domestic partnership that you think can never be solved. **Irreconcilable differences** is the only legal grounds for getting a **summary dissolution**.*

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\* At the trial in a regular dissolution, a judge would set a value on and divide community property and debts into two approximately equal parts as provided by California law.

Each of us also understands that even after a *Joint Petition for Summary Dissolution* is filed, this entire agreement will be canceled if either of us revokes the dissolution proceeding.<sup>3</sup>

<sup>3</sup> *This means that the property agreement is a part of the dissolution proceeding. If either of you decides to stop the dissolution proceeding by turning in a Notice of Revocation of Petition for Summary Dissolution (form FL-830) (see page 18), this entire agreement will be canceled.*

## II. Division of Community Property<sup>4</sup>

We divide our community property as follows:

<sup>4</sup> *Community property is property that you own as a couple (see page 2).*

### 1. Chris transfers to Pat as Pat's sole and separate property:

*If you have no community property, replace Part II with the simple statement "**We have no community property.**"*

- A. All household furniture and furnishings located at the apartment at 180 Needlepoint Way, San Francisco.<sup>5</sup>
- B. All rights to cash in savings account at Home Savings.
- C. All cash value in life insurance policy insuring life of Pat through Sun Valley Life Insurance.
- D. All retirement and pension plan benefits earned by Pat during marriage.
- E. Two U.S. Savings Bonds, Series E.
- F. Pat's jewelry.
- G. 2003 Chevrolet 4-door sedan.

<sup>5</sup> *If the furniture and household goods in one apartment are to be divided, they may have to be listed item by item.*

### 2. Pat transfers to Chris as Chris's sole and separate property:

- A. All household furniture and furnishings located at the apartment on 222 Bond Street, San Francisco.
- B. All retirement and pension plan benefits earned by Chris during marriage.
- C. Season tickets to Golden State Terriers basketball games.
- D. One stereo set.
- E. One set of Jock Nicklaus golf clubs.
- F. One RAC color television.
- G. 2003 Ford station wagon.
- H. One pet parrot named Arthur, plus cage and parrot food.
- I. All rights to cash in checking account in Bank of America.

III. Division of Community Property (Debts)<sup>6</sup>

1. Chris will pay the following debts and will not at any time hold Pat responsible for them:

- A. Mister Charge account.
- B. Debt to Dr. R.C. Himple.
- C. Debt to Sam's Drugs.
- D. Debt to UC Berkeley for college education loan to Chris.<sup>7</sup>
- E. Debt to Golf Store for golf clubs.
- F. Debt to Everything Electronics for color TV and stereo set.
- G. Debt to Used Ford Store for 2003 Ford.

2. Pat will pay the following debts and will not at any time hold Chris responsible for them:

- A. Cogwell's charge account.
- B. Debt to Pat's parents, Mr. and Mrs. Joseph Smith.
- C. Debt to Green's Furniture.
- D. Debt to Dr. Irving Roberts.
- E. Debt to Friendly Finance Company for 2003 Chevrolet 4-door Sedan.

IV. Waiver of Spousal/Partner Support<sup>8</sup>

Each of us waives any claim for spousal/partner support now and for all time.

V. Dated:

Dated:

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Chris P. Smedlap

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Pat T. Smedlap

<sup>6</sup> If you have no unpaid debts, replace Part III with the simple statement "**We have no unpaid community obligations.**"

<sup>7</sup> A general rule for dividing debts is to give the debt over to the person who benefited more from the item. In the sample agreement, because Chris received the education, Chris should pay off the loan.

<sup>8</sup> You each give up the right to have your spouse or partner support you.

## IX. WHAT STEPS DO YOU HAVE TO TAKE TO GET A SUMMARY DISSOLUTION?

If after reviewing the information in this booklet, you feel your marriage or your domestic partnership will qualify for a summary dissolution, you should carefully go through the following 15 steps. You can fill out the forms, worksheets, and agreements in the summary dissolution section

- online, for free, at [www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp);
- with a typewriter; or
- with neat printing.

1. \_\_\_\_ Complete and give your spouse or domestic partner a list of community and separate property assets and obligations. This information is needed to comply with the requirement to exchange a preliminary declaration of disclosure in summary dissolution cases. Use the forms listed below in 1a or 1b for this purpose.
  - a. \_\_\_\_ *A Declaration of Disclosure* (form FL-140) and a *Schedule of Assets and Debts* (form FL-142) (or a *Property Declaration* (form FL-160)). These forms are not included in this booklet. You may find them online at [www.courts.ca.gov/forms.htm](http://www.courts.ca.gov/forms.htm). Give one copy to your spouse or domestic partner and keep one for your records; or
  - b. \_\_\_\_ The worksheets in this booklet on pages 7, 9, and 11.
    - (1) \_\_\_\_ Turn to page 7 and complete the Worksheet for Determining Value of Separate Property. See page 6 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.
    - (2) \_\_\_\_ Turn to page 9 and complete the Worksheet for Determining Value and Division of Community Property. See page 8 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.
    - (3) \_\_\_\_ Turn to page 11 and complete the Worksheet for Determining Community Obligations and Their Division. See page 10 for an example. Make one extra copy of your worksheet after it has been completed. Give one copy to your spouse or partner and keep one for your records.
2. \_\_\_\_ Along with the documents listed in 1, give your spouse or domestic partner all tax returns you filed in the last two years. Give one copy to your spouse or domestic partner and keep one copy for your records.
3. \_\_\_\_ Fill out an *Income and Expense Declaration* (form FL-150). You each need to fill out this form and give it to your spouse or partner before you sign your property settlement agreement or complete your divorce. Make one extra copy of your form after it has been completed. Give one copy to your spouse or partner and keep one for your records.
4. \_\_\_\_ Complete a written statement about business and investments opportunities and give it to your spouse or partner before you sign a property settlement agreement or complete your divorce. Keep a copy for your records.

**Note:** The written statement must describe any investment opportunity, business opportunity, or other income-producing opportunity that developed since the date you separated which was based on any investment made, significant business done, or other income-producing opportunity that was presented to you between the date you married or became domestic partners and the date you separated (there is no specific form for this purpose).
5. \_\_\_\_ Type or print your property settlement agreement if you have any property or debts to divide. Both of you must date and sign it. Make two extra copies. See pages 12–15 for an example and instructions. You can also find a version that you can fill in online at [www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp) in the information on summary dissolution at <http://courts.ca.gov/1241.htm>.
6. \_\_\_\_ Fill out a *Joint Petition for Summary Dissolution* (form FL-800). Both of you must sign and date this petition. Make two extra copies of this form. (This is the form you need to **START** the process.)

**Note:** When signing your joint petition and your property settlement agreement, you are signing these documents under penalty of perjury under the laws of the State of California, which is the same as being sworn to testify in court.

**You may not sign each other's name.**

7. \_\_\_\_ Make three sets of forms that include copies of your property settlement agreement and a copy of your *Joint Petition for Summary Dissolution* (form FL-800). Staple each set together.
8. \_\_\_\_ Fill out the top portion of the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) and make three copies of it.
9. \_\_\_\_ Make one extra copy of a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) so each of you has one, and hold on to it. This is the form you would need to **STOP** the process. You may wish to use it during the waiting period if you change your mind and want to stop the process. You should keep one copy. See page 18 for more information.
- 10 \_\_\_\_ Take your *Joint Petition for Summary Dissolution* (form FL-800), *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825), and all of your copies to the superior court clerk's office together with two self-addressed, stamped envelopes (one addressed to each spouse or partner). The location of your superior court clerk's office can be found in the phone book or online at [www.courts.ca.gov/find-my-court.htm](http://www.courts.ca.gov/find-my-court.htm). The clerk will stamp the date on all copies, will keep one copy of each document, and will return the other two to you. One copy is for each spouse or partner.
11. \_\_\_\_ Pay the superior court clerk's filing fee. If you cannot afford to pay the filing fee, you may qualify for a fee waiver based on your income. If one of you qualifies for a fee waiver but the other one does not, the one who does not qualify will have to pay the filing fee. To request a fee waiver, see *Information Sheet on Waiver of Court Fees and Costs* (form FW-001-INFO). You will need to prepare a *Request to Waive Court Fees* (form FW-001) and an *Order on Court Fee Waiver* (form FW-003).
12. \_\_\_\_ The clerk will file your joint petition and return the copies to you and your spouse or partner. The court may also process the *Judgment of Dissolution* at that time, in the next few weeks, or after the six-month waiting period has expired and give or mail it to you and your spouse or partner. The *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) will have a date on which the dissolution ending your marriage, domestic partnership, or both will be final. That is the effective date of your dissolution and it will be six months from the date you file your joint petition. The six-month waiting period is mandated by law.
13. \_\_\_\_ Put your copies of all documents in a safe place.
14. \_\_\_\_ Wait for six months. If either one of you wants to stop the summary dissolution case, fill out and file a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) before the six months run out.
15. \_\_\_\_ On the day that appears on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the effective date of your dissolution:
  - a. Your marriage or domestic partnership (or both) is ended;
  - b. The agreements you made in your property settlement agreement are binding—you will then own the property assigned to you, and you will have to pay the bills assigned to you;
  - c. Except for those agreements, you and your spouse or partner have no further obligations to each other; and
  - d. You are legally free to remarry or register a new domestic partnership.

**REMEMBER:** Either of you can stop the process by filling out a *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) and bringing it to the superior court clerk during the six-month waiting period before the date your dissolution is effective according to the *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) that you received from the court.

## X. WHAT YOU SHOULD KNOW ABOUT REVOCATION

It is important to realize that the *Notice of Revocation of Petition for Summary Dissolution* (form FL-830) is not just another form you are supposed to fill out and turn in.

**Do not fill it out and do not bring it to the superior court clerk unless you want to stop the divorce!**

### **What is the notice of revocation for?**

This is the form you need if you want to stop the divorce. **Revoking** the agreement is canceling or stopping it.

### **What reasons are there for revoking?**

There are three reasons you might have for wanting to stop the summary dissolution:

1. You have decided to return to your spouse or partner and continue the marriage or domestic partnership;
2. You want to change over to the regular dissolution as a better way of getting your divorce; or
3. You learn that one of you is pregnant.

### **Why might you want to change over to the regular dissolution?**

You may come to believe that you will get a better settlement if you go to court than with the agreement you originally made with your spouse or partner. (Maybe, after thinking it over, you feel you are not receiving a fair share of the community property.)

### **How do you do it?**

At the time you picked up the joint petition forms, you and your spouse or partner also received a blank *Notice of Revocation of Petition for Summary Dissolution* (form FL-830). Fill out the form, sign it, make two copies, and bring them to the superior court clerk's office. You must also send a copy of form FL-830 to your spouse or domestic partner by first-class mail, postage prepaid, to his or her last known address. You can do this alone. This form does not need your spouse's or partner's signature.

If you do this at any time during the six-month waiting period, before the effective date of your dissolution, you will stop this divorce proceeding.

### **Can the dissolution be stopped once the waiting period is over?**

**NO.** After the date the court wrote on your *Judgment of Dissolution and Notice of Entry of Judgment* (form FL-825) as the date your marriage or domestic partnership is ended (the date the divorce is effective), you can no longer revoke the dissolution by filing the revocation form. You may have other legal options, but you will need to talk to a lawyer about them.

**If you change over to a regular dissolution, what happens to the part of the waiting period that has passed?** You can apply the amount of time you waited on the summary dissolution to your regular dissolution. For example, if four months went by before you decided to revoke the summary dissolution, the waiting period for the regular dissolution will be shortened by four months.

However, you can save this time **only** if you file for a regular dissolution within 90 days of revoking the summary dissolution.

## **XI. SHOULD YOU SEE A LAWYER?**

### **Must you have a lawyer to use the summary dissolution procedure?**

No. You can do the whole thing by yourselves. But it would be wise to see a lawyer before you decide to do it yourselves. You should not rely on this booklet only. It is not intended to take the place of a lawyer.

### **If you want legal advice, does that mean you have to hire a lawyer?**

No. You may hire a lawyer, of course, but you can also just visit a lawyer once or twice for advice on how to carry out the dissolution proceeding. Do not be afraid to ask the lawyer in advance what fee will be charged. It may be surprisingly inexpensive to have a lawyer handle your divorce.

### **Do you have to accept your lawyer's advice?**

No, you do not. And if you are not pleased with what one lawyer advises, you can feel free to go to another one.

### **How can a lawyer help you with the summary dissolution procedure?**

First, a lawyer can advise you, on the basis of your personal situation, whether you ought to use the regular dissolution procedure rather than the summary dissolution procedure.

Second, a lawyer can read your property settlement agreement to help you figure out if you have thought of everything you should have. (It is easy to forget things you do not see very often, such as savings bonds and safe deposit boxes.)

Third, in many situations it is not easy to figure out what should count as community property and what should count as separate property. Suppose one of you had money before the marriage and put it into a bank account in both of your names and then both of you used money from that account. It may not be easy to decide how the money remaining in that account should be divided. A lawyer can advise you on how to make these decisions.

Fourth, there may be special situations in which your property settlement is not covered by the sample agreement on pages 13–15.

A lawyer can help you put the agreement in words that are legally precise and cannot be challenged or misinterpreted later.

### **Where can you find a lawyer?**

You can locate organizations that can help you find a lawyer in the yellow pages of your telephone directory under "Attorneys," "Attorney Referral Service," or "Lawyer Referral Service." In many cases you will be able to find an attorney who will charge only a small fee for your first visit. You can get information about free or low-cost legal services through the county bar association in your county. You can find information about certified lawyer referral services at [www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp) or on the State Bar website at [www.calbar.ca.gov](http://www.calbar.ca.gov).

## **XII. SOME GENERAL INFORMATION**

### **What about income taxes?**

If you have filed a joint tax return, both of you will still be responsible for paying any unpaid taxes even after your divorce.

If you are receiving a tax refund, you should agree in the property settlement agreement on how it should be divided.

The amount of money that you will owe, or that will be taken out of your paycheck, for income taxes may be greater after you are single again. If that is the case, you should prepare yourself for a bigger tax obligation.

It would be a good idea to consult the Internal Revenue Service or a tax expert on how the divorce is going to affect your taxes. You should probably do this before you make your property settlement agreement.

### **What about bank accounts and credit cards?**

If you have a joint bank account, it may be a good idea to close it when you separate and get two individual bank accounts. That way it will be easier to keep your money separate.

If you have credit card accounts that you both have been using, you should destroy the cards and take out separate accounts.

### **What about cars?**

If both of your names are on a title to a car and you agree that one of you is going to own the car, you need to take action to change the ownership. You should call or visit the Department of Motor Vehicles to find out how to do that. You should also talk to the lender to get the debt into one person's name and change the insurance coverage after both the title and debt are transferred.

### **What if your spouse or domestic partner does not pay his or her debts?**

If your spouse or domestic partner does not pay a debt that is his or her responsibility, the person who loaned the money may be able to collect it from you. But then a court may order your spouse or partner to reimburse you. If you have any reason to worry about this, a lawyer can explain your rights to you.

### **Can you take back your former name?**

If you changed your name when you were married or registered your domestic partnership, you have the right to give up that name and get your former name back. You can do this by requesting it in the joint petition. If you do not request this in the joint petition, you can file a form called *Ex Parte Application for Restoration of Former Name After Entry of Judgment and Order* (form FL-395). Your spouse or partner cannot make you change your name.

### **What if I am not happy with my final judgment?**

When your divorce is final, all your rights and duties connected with your marriage or domestic partnership have ended and you cannot appeal. But if you decide later that you were cheated or pressured by your spouse or partner, or if you believe that a mistake was made in the paperwork connected with the divorce, the court may be able to set aside the divorce. A lawyer can explain your rights.

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Recommend JC approval (has circulated for comment)**

**RUPRO Meeting:** 2/24/17

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

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, heather.anderson@jud.ca.gov

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

Approved by RUPRO: 2016

Project description from annual agenda: Project 1 - Improve Rules and Forms: This is a continuing project; it was listed as item 1 on the committee's annual agendas for 2012 – 2015. Working through the Rules Subcommittee, review legislative and case law changes and suggestions from committee members, justices, judges, court staff, the bar, and the public concerning appellate rules and forms and appellate court administration and make recommendations to the council for necessary changes to appellate rules, standards, and forms.

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

Senate Bill 1065 directs the Judicial Council to adopt implementing rules on or before July 1, 2017.

**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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 23-24, 2017

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Title

Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration

Agenda Item Type

Action Required

Effective Date

July 1, 2017

Rules, Forms, Standards, or Statutes Affected

Amend California Rules of Court, rules 8.104 and adopt rules 8.710 – 8.717

Date of Report

February 16, 2017

Recommended by

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair

Contact

Heather Anderson, 415-865-7691  
[heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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### Executive Summary

Recent legislation requires the Court of Appeal to issue its decision in cases involving the review of certain orders denying motions to compel arbitration no later than 100 days after the notice of appeal is filed. The legislation also requires the Judicial Council to adopt rules to implement this requirement and to establish a shortened notice of appeal period in these cases. These proposed rules are intended to fulfill this legislative obligation.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2018, adopt new California Rules of Court, rules 8.710 – 8.717 to establish the procedures for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim under the Elder and Dependent Adult Civil Protection Act in which a party has been granted a preference under Code of Civil Procedure section 36. The text of the new rules is attached at pages 9-14.

## **Previous Council Action**

The Judicial Council opposed Senate Bill 1065, the bill that established this expedited review procedure for certain orders denying motions to compel arbitration. This opposition was based on the Council's longstanding history of opposing legislation that establishes calendar preferences as well as specific concerns about the feasibility of the 100-day timeframe established by this statute and the likely adverse impact of this extremely tight timeframe on other matters pending in the Court of Appeal, including those with their own calendar preferences.

Although the Council has not previously considered rules to implement this legislation, it has adopted rules to implement other legislation mandating expedited review, including recent legislation relating to certain cases under the California Environmental Quality Act (CEQA). In 2011, the Judicial Council adopted rule 8.497 to implement Assembly Bill 900 (Stats. 2011, ch. 354), which created an expedited judicial review procedure in the Court of Appeal for CEQA cases relating to "environmental leadership projects. In 2013, the Legislature adopted legislation that changed the expedited CEQA review procedure in environmental leadership cases and also established expedited review in cases relating to a new sports arena in Sacramento (Senate Bill 743 (Stats. 2013, ch. 386). SB 743 required the Judicial Council to adopt rules providing for the resolution of these cases, including any potential appeals, within 270 days of certification of the record of proceedings (Pub. Resources Code §§ 21185 and 21168.6.6). The Judicial Council responded to SB 743 with the adoption of rules 3.1365, 3.2220-3.2231 and 8.700 - 8.705, effective July 1, 2014. At its December 2016 meeting, the Council amended rules 8.700 - 8.705 effective January 1, 2017 to implement new legislation making the expedited review procedures applicable to CEQA challenges to "capital annex" projects. (Senate Bill 836 (Stats. 2016, ch. 31)).

## **Rationale for Recommendation**

On September 25, 2016, the Governor signed into law Senate Bill (SB) 1065. This legislation enacted new Code of Civil Procedure section 1294.4 which provides for expedited appellate review of superior court orders dismissing or denying a petition to compel arbitration involving a claim under the Elder and Dependent Adult Civil Protection Act in which a party has been granted a preference under Code of Civil Procedure section 36. Under this new statute, the Court of Appeal is required to issue its decision no later than 100 days after the notice of appeal is filed and may only grant extensions of time if good cause is shown and the extension will promote the interests of justice. The legislation requires that, on or before July 1, 2017, the Judicial Council adopt rules to implement these statutory requirements and to establish a shortened notice of appeal period for these cases.

Proposed new rules 8.710 – 8.717 are intended to fulfill the Judicial Council's statutory obligation to adopt rules to implement this legislation. These proposed new rules are generally modeled on existing rules 8.700 – 8.702, which, as noted above, implement the statutory requirements for expedited appeals in certain cases under CEQA. There is an important

difference in the underlying statutes, however, that necessitated differences between proposed new rules 8.710 – 8.717 and current rules 8.700 – 8.702. Under the relevant CEQA provisions, the Council was required to adopt rules providing for the resolution of these actions or proceedings, including any potential appeals there from, within 270 days of certification of the administrative record (Pub. Res. Code, §§ 21168.6.6 and 21185). Dividing this time equally between the trial and appellate courts, this gave approximately 135 days for resolution of the CEQA appeals under rules 8.700 – 8.702. As noted above, new Code of Civil Procedure section 1294.4 provides for resolution of appeals of these arbitration matters within 100 days, giving the court 35 fewer days in these matters. As a result, in an effort to meet the time for issuance of a decision specified in Section 1294.4, the timeframes under proposed new rules 8.710 – 8.717 are even shorter for some of the steps in the appellate process than the extremely short deadlines under current rules 8.700 – 8.702. It is also important to note that section 1294.4 permits extensions of time “if good cause is shown and the extension will promote the interests of justice,” so, depending on the circumstances, in an individual case some of the deadlines specified in the proposed rules may be extended, causing the resolution of the case to extend beyond the 100-day period specified in the statute.

Among other things, proposed new rules 8.710 – 8.717 address the following:

***Electronic service and filing.*** Proposed rule 8.711 (a) would require that documents be served electronically on parties who have consented to electronic service or who are otherwise required by law or court order to accept electronic service. It would also provide that all parties represented by counsel are deemed to have consented to electronic service and that all self-represented parties may so consent. In addition, the proposed rule would also require that all parties except self-represented parties must file all documents electronically except as otherwise provided by these rules, the local rules of the reviewing court, or court order and would permit a court in one of these appeals to order a self-represented party to file documents electronically. These provisions are different from the existing CEQA rules, reflecting, in part, recent changes to the general rules on electronic filing and service in the appellate courts.

***Notice of appeal period:*** As noted above, section 1294.4 specifically requires that the Judicial Council adopt rules to establish a shortened notice of appeal period for these cases. Proposed new rule 8.712(b) would require that a notice of appeal in these cases be filed within 20 days from service of notice of entry of the order being appealed. This would be 40 days, or 2/3rds, shorter than the normal 60 day period e normal period for filing a notice of appeal in an unlimited civil case.

This proposed notice of appeal period is longer, however, than the notice of appeal period under the existing CEQA rules. Under both sets of rules, there is a total of 30 days from service of notice of entry of the judgment or order being appealed until the time for filing the appellant’s opening brief, but this period is divided up differently under the two sets of rules. Under the existing CEQA rules, the notice of appeal must be filed within 5 days from service of notice of

entry to the judgment and the deadline for filing the appellant's opening is 25 days of the filing of the notice of appeal. In contrast, under proposed new rule 8.712, the time for filing the notice of appeal would be 20 days from service of notice of entry to the judgment and under proposed new rule 8.715 the deadline for filing the appellant's opening would be within 10 days of the filing of the notice of appeal. The committee concluded that providing for a longer notice of appeal period in the cases governed by section 1294.4 would provide greater flexibility within the 100-day period provided by the statute and address some issues about overlap with the period for filing motions for reconsideration in the trial courts, while still giving the appellant a total of 30 days to prepare an opening brief.

***Extensions of time to appeal.*** Like current rules 8.108 and 8.702(c), proposed rule 8.712(c) would extend the time to file a notice of appeal when a motion to reconsider the order being appealed is timely filed and denied or when a cross-appeal is filed. Like current rule 8.702, the proposed rule provides for a much shorter extension of the appeal period than under 8.108: 5 court days, rather than 30 days in the case of the motion or 20 days in the case of a cross-appeal. Unlike rule 8.702, proposed rule 8.712 does not provide for extensions for motions for a new trial or to vacate a judgment, as these motions do not appear applicable in the case of orders denying a motion to compel arbitration.

***Record on appeal.*** Like current rule 8.702(d), proposed rule 8.713 makes several changes to the general rules relating to records on appeal, including:

- Requiring that parties proceed by appendix in lieu of using a clerk's transcript, which reduces the burden on the trial court associated with preparing the record in these cases and eliminates the possibility of delay associated with preparation of clerk's transcript.
- Requiring that the appellant's notice designating the record be filed with the notice of appeal, which is 10 days earlier than in regular appeals.
- Requiring that, if the appellant wants a record of the oral proceedings, a reporter's transcript be used. In regular appeals, appellants have other options, such as an agreed statement, that can be used instead of a reporter's transcript.
- Requiring that the reporter's transcript be prepared within 10 days after the court notifies the reporter to prepare the transcript, which is 20 days earlier than in regular appeals.

Unlike current rule 8.702(d), proposed rule 8.713 does not include a separate provision addressing what happens if an appellant files an application for payment of reporter's transcript costs out of the Transcript Reimbursement Fund. The committee concluded that such applications were much less likely in the cases covered by section 1294.4 than in the CEQA cases. However, in the event that such an application is filed in one of these appeals, proposed rule 8.713 does include a cross-reference to rule 8.130, which addresses Transcript Reimbursement Fund applications.

Proposed rule 8.713(b)(4) also includes a procedure modelled on rule 8.153 for a party who has not purchased a copy of the record to borrow the appellant's copy.

**Briefs on appeal.** Proposed rule 8.715 establishes a very quick briefing schedule; unless otherwise ordered by the reviewing court:

- Appellant is required to serve and file the opening brief within 10 days after the notice of appeal is served and filed (as noted above, this is shorter than under existing rule 8.702(f));
- Respondent is required to file its brief within 25 days after the appellant files its opening brief; and
- Appellant is required to file any reply brief within 15 days after respondent files its brief.

Similar to the CEQA rules, proposed new rule 8.715(d) provides that if the parties stipulate to extend the time to file briefs, the 100-day period will be extended for the length of the stipulated extension. Subdivision (e) of this rule would also provide that if a party fails to timely file a brief, the party will have only 2 days from service of notice by the clerk to cure that default or sanctions may be imposed.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

The proposed rules were circulated for public comment between December 5, 2016 and January 11, 2017. Nine individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, four agreed with the proposal if modified, and two did not indicate a position on the proposal overall but provided comments. The full text of the comments received on the proposal and the rule subcommittee's suggested committee responses are set out in the attached comment chart. The main substantive comments and rule subcommittee's proposed responses are also discussed below.

**Notice of Appeal Period.** In the invitation to comment, the committee specifically sought comments on the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief was preferable to the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief. Five commentators provided specific input on this question:

- Two commentators expressed a preference for the 5-day notice of appeal period:
  - One commentator expressed concern about making the briefing periods for appellants and respondents similar and suggested that appellants might want to file the notice of appeal early for purposes of obtaining a stay.
  - One court expressed a desire for the rules to be similar to those for the expedited CEQA review.
- One Court of Appeal that commented suggested shortening the notice of appeal period to 10 or 15 days in order to shorten the overall period for completing these cases.

- Two commentators expressed a preference for the proposal as circulated, with the longer notice of appeal period:
  - One noted the jurisdictional nature of the deadline for filing the notice of appeal and expressed concern about the likelihood of inadvertent defaults when the notice of appeal period is very short; and
  - The other, a county bar association, simply expressed that the proposed approach is preferable.

Although, in terms of numbers, the weight of the comments favors lengthening the notice of appeal period, the committee is recommending adoption of the rule as circulated, with the 20-day notice of appeal period, for the following reasons:

- Shortening the notice of appeal period and lengthening the briefing time will not actually increase the overall length of time available for the appellant to prepare its opening brief.
- While shortening the notice of appeal period and lengthening the briefing time is likely to reduce the number of cases in which the reporter’s transcript is not yet available when the appellant’s opening brief is due (necessitating filing a later, final brief that includes citations to the transcript), it is not likely to eliminate this issue altogether because the deadlines will remain very tight.
- As noted by one commentator, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether.
- Under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is “within 10 days after service upon the party of written notice of entry of the order,” so a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court.
- Increasing the time for filing the opening brief will necessitate reducing the already short time that either the parties have for briefing or the Court of Appeal has to consider the matter and issue its decision in these cases.

One commentator did raise a legitimate concern about appellants who may wish to file a notice of appeal quickly for purposes of obtaining a stay. Under the proposal, such an appellant would have a substantially shorter time to file the opening brief. However, such an appellant could still seek a stay in the trial court even if the notice of appeal was not yet filed.

***Extensions of the Notice of Appeal Period.*** As circulated for public comment, proposed rule 8.712(c) mirrored provisions in rules 8.108 and 8.702 that provide extensions on the time for filing the notice of appeal when certain post-trial motions are filed in the trial court, including motions for a new trial or to vacate judgment. Five commentators provided input on this provision:

- Three commentators expressed concern or suggested eliminating all or part of this provision:

- One recommended eliminating this provision entirely, indicating that motions for new trials and motions to vacate judgments are not applicable to orders denying motions to compel arbitration.
- A Court of Appeal also commented that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration. In addition, the Court expressed concern about the lack of guidance on how the courts are to handle conflicts, noted in the Advisory Committee Comment to the rule, between the deadlines for the filing of the notice of appeal and these post-trial motions.
- A Presiding Justice in another Court of Appeal expressed concern that these extensions of the time for filing the notice of appeal are inconsistent with the intent of the legislation that these appeals be disposed of within 100 days.
- Two commentators expressed support for including a provision that addresses the time for filing a cross-appeal.

Based these comments and further research, the committee revised the proposed rules to delete the provisions regarding motions for new trial and motions to vacate judgments as inapplicable in appeals involving motions to compel arbitration. The rules committee also deleted the related advisory committee comment that would have addressed these provisions.

The committee retained the provision addressing extensions when a motion for reconsideration is filed, however. There is case law indicating that motions for reconsideration can be made following an order on a petition to compel arbitration. (See *Blake v. Ecker* (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in *Le Francois v. Goel* (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5 and Knight et al, Cal. Prac. Guide Alt. Disp. Res. Ch. 5-G, sec. 5:335.6.). The legislation enacting new Code of Civil Procedure section 1494.4 did not eliminate the right to seek reconsideration of these rulings. The committee therefore concluded that it would be best for the proposed rules to follow the model of rule 8.108 in clarifying the impact on the time for filing a notice of appeal in the event that such a motion is filed in the trial court. Since the legislation is focused on limiting the time spent on the appellate process, not the trial court process, the committee's view is that including such a provision is inconsistent with the intent of the legislation.

Based on the comments, the committee also retained the provision that gives guidance about the time to file a cross-appeal.

### **Alternatives**

Because adoption of rules to implement Code of Civil Procedure section 1294.4 is mandated by statute, the committee did not consider the option of not proposing implementing rules. The committee did, however, consider several different alternatives with respect to particular aspects of the proposed rule.

The committee considered how much of the 100-day period permitted by section 1294.4 to allocate to various steps in the appellate process. For example, the committee considered setting a 5-day notice of appeal period, similar to that in the CEQA rules, and then giving a longer time for filing the appellant’s opening brief. As discussed above, the committee ultimately decided that the approach of having a somewhat longer notice of appeal period and shorter opening brief deadline was preferable. This is in part because this approach will provide greater flexibility in scheduling the remaining briefing while still allowing time for the court’s deliberations during the statutorily–mandated 100-day period for the appeal.

The committee also considered what would be the best approach to provide rule users with adequate notice regarding the situations in which the standard notice of appeal period does not apply. The proposed amendments to rule 8.104 would add a cross-reference to proposed new rule 8.712 and the proposed amendments to the accompanying advisory committee comment would provide information about the types of proceedings that rule 8.712 covers, as well as information about the other rule provisions currently cross-referenced in rule 8.104. The committee considered the alternative of adding more descriptive information to the text of the rule, but decided against this approach because it would make the rule text longer and potentially more difficult to understand.

The committee also considered and sought public comments on whether or not it is necessary to include provisions specifically addressing the potential effect of a cross-appeal on the time to file a notice of appeal and Transcript Reimbursement Fund applications. As discussed above, the committee decided to keep the provision relating to cross-appeals and, given the cross-reference to rule 8.130, that it is not necessary to include a provision specifically addressing Transcript Reimbursement Fund applications.

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

Implementing Code of Civil Procedure section 1294.4 will generate costs and operational impact for the Courts of Appeal in which the proceedings governed by this statute are filed. The committee does not anticipate that these proposed rules will add to the burden created by this new statutory procedure and should lessen the impact by clarifying the procedures.

### **Attachments and Links**

1. Cal. Rules of Court, rules 8.104 and 8.710 – 8.717, at pages 9–14
2. Chart of comments, at pages 15–34
3. Attachment A: Senate bill 1065, as adopted by the Legislature and approved by the Governor:  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1065](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1065)

California Rules of Court, rules 8.104 is amended and rules 8.710 – 8.717 are adopted, effective July 1, 2017 to read:

1 **Title 8. Appellate Rules**

2  
3 **Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

4  
5 **Chapter 2. Civil Appeals**

6  
7 **Article 1. Taking the Appeal**

8  
9 **Rule 8.104. Time to appeal**

10  
11 **(a) Normal time**

12  
13 (1) Unless a statute, or rules 8.108, ~~or rule 8.702, or 8.712~~ provides otherwise, a notice  
14 of appeal must be filed on or before the earliest of:

15  
16 (A) – (C) \* \* \*

17  
18 **(b) – (e) \* \* \***

19  
20 **Advisory Committee Comment**

21  
22 **Subdivision (a).** This subdivision establishes the standard time for filing a notice of appeal and identifies  
23 rules that establish very limited exceptions to this standard time period for cases involving certain post  
24 judgment motions and cross-appeals (rule 8.108), certain expedited appeals under the California  
25 Environmental Quality Act (rule 8.702), and appeals under Code of Civil Procedure section 1294.4 of an  
26 order dismissing or denying a petition to compel arbitration (rule 8.712).

27  
28 Under subdivision (a)(1)(A), a notice of entry of judgment (or a copy of the judgment) must show the  
29 date on which the clerk served the document. The proof of service establishes the date that the 60-day  
30 period under subdivision (a)(1)(A) begins to run.

31  
32 Subdivision (a)(1)(B) requires that a notice of entry of judgment (or a copy of the judgment) served by or  
33 on a party be accompanied by proof of service. The proof of service establishes the date that the 60-day  
34 period under subdivision (a)(1)(B) begins to run. Although the general rule on service (rule 8.25(a))  
35 requires proof of service for all documents served by parties, the requirement is reiterated here because of  
36 the serious consequence of a failure to file a timely notice of appeal (see subd. (e)).

37  
38 **Subdivision (b).** \* \* \*

1 **Chapter 12. Appeals Under Code of Civil Procedure Section 1294.4 From An Order**  
2 **Dismissing Or Denying A Petition To Compel Arbitration**

3  
4  
5 **Rule 8.710. Application**

6  
7 **(a) Application of the rules in this chapter**

8  
9 The rules in this chapter govern appeals under Code of Civil Procedure section 1294.4 to  
10 from a superior court order dismissing or denying a petition to compel arbitration.

11  
12 **(b) Application of general rules for civil appeals**

13  
14 Except as otherwise provided by the rules in this chapter, rules 8.100–8.278, relating to  
15 civil appeals, apply to appeals under this chapter.

16  
17  
18 **Rule 8.711. Filing and service**

19  
20 **(a) Method of Service**

21  
22 Except as otherwise provided by law:

23  
24 (1) All documents must be served electronically on parties who have consented to  
25 electronic service or who are otherwise required by law or court order to accept  
26 electronic service. All parties represented by counsel are deemed to have consented  
27 to electronic service. All self-represented parties may so consent.

28  
29 (2) All documents that the rules in this chapter require be served on the parties that are  
30 not served electronically must be served by personal delivery, express mail, or other  
31 means consistent with Code of Civil Procedure sections 1010, 1011, 1012, and 1013  
32 and reasonably calculated to ensure delivery of the document to the parties not later  
33 than the close of the business day after the document is filed or lodged with the  
34 court.

35  
36 **(b) Electronic filing**

37  
38 In accordance with rule 8.71, all parties except self-represented parties are required to file  
39 all documents electronically except as otherwise provided by these rules, the local rules of  
40 the reviewing court, or court order. Notwithstanding rule 8.71(b), in appeals governed by  
41 this chapter, a court may order a self-represented party to file documents electronically.

1 **(c) Exemption from extension of time**

2  
3 The extension of time provided in Code of Civil Procedure section 1010.6 for service  
4 completed by electronic means does not apply to any service in actions governed by the  
5 rules in this chapter.  
6  
7

8 **Rule 8.712. Notice of appeal**

9  
10 **(a) Contents of notice of appeal**

- 11  
12 (1) The notice of appeal must state that the superior court order being appealed is  
13 governed by the rules in this chapter.  
14  
15 (2) Copies of the order being appealed and the order granting preference under Code of  
16 Civil Procedure section 36 must be attached to the notice of appeal.  
17

18 **(b) Time to appeal**

19  
20 The notice of appeal must be served and filed on or before the earlier of:

- 21  
22 (1) Twenty days after the superior court clerk serves on the party filing the notice of  
23 appeal a document entitled “Notice of Entry” of the order dismissing or denying a  
24 petition to compel arbitration or a filed-endorsed copy of the order, showing the date  
25 either was served; or  
26  
27 (2) Twenty days after the party filing the notice of appeal serves or is served by a party  
28 with a document entitled “Notice of Entry” of the order dismissing or denying a  
29 petition to compel arbitration or a filed-endorsed copy of the order, accompanied by  
30 proof of service.  
31

32 **(c) Extending the time to appeal**

- 33  
34 (1) *Motion to reconsider appealable order*

35  
36 If any party serves and files a valid motion under Code of Civil Procedure section  
37 1008(a) to reconsider the order dismissing or denying a petition to compel  
38 arbitration, the time to appeal from that order is extended for all parties until five  
39 court days after the superior court clerk or a party serves an order denying the motion  
40 or a notice of entry of that order.

- 41  
42 (2) *Cross-appeal*

43  
44 If an appellant timely appeals from the order dismissing or denying a petition to  
45 compel arbitration, the time for any other party to appeal from the same order is

1 extended until five court days after the superior court clerk serves notification of the  
2 first appeal.

3  
4  
5 **Rule 8.713. Record on appeal**

6  
7 **(a) Record of written documents**

8  
9 The record of the written documents from the superior court proceedings must be in the  
10 form of a joint appendix or separate appellant's and respondent's appendixes under rule  
11 8.124.

12  
13 **(b) Record of the oral proceedings**

14  
15 (1) The appellant must serve and file with its notice of appeal a notice designating the  
16 record under rule 8.121 specifying whether the appellant elects to proceed with or  
17 without a record of the oral proceedings in the trial court. If the appellant elects to  
18 proceed with a record of the oral proceedings in the trial court, the notice must  
19 designate a reporter's transcript.

20  
21 (2) Within 10 days after the superior court notifies the court reporter to prepare the  
22 transcript under rule 8.130(d)(2), the reporter must prepare and certify an original of  
23 the transcript and file the original and required number of copies in superior court.

24  
25 (3) If the appellant does not present its notice of designation as required under (1) or if  
26 any designating party does not submit the required deposit for the reporter's  
27 transcript under rule 8.130(b)(1) or a permissible substitute under rule 8.130(b)(3)  
28 with its notice of designation or otherwise fails to timely do another act required to  
29 procure the record, the superior court clerk must serve the defaulting party with a  
30 notice indicating that the party must do the required act within two court days of  
31 service of the clerk's notice or the reviewing court may impose one of the following  
32 sanctions:

33  
34 (A) If the defaulting party is the appellant, the court may dismiss the appeal; or

35  
36 (B) If the defaulting party is the respondent, the court may proceed with the appeal  
37 on the record designated by the appellant.

38  
39 (4) Within 10 days after the record is filed in the reviewing court, a party that has not  
40 purchased its own copy of the record may request the appellant, in writing, to lend it  
41 the appellant's copy of the record at the time that appellant serves its final opening  
42 brief under rule 8.715(c)(2). The borrowing party must return the copy of the record  
43 when it serves its brief or the time to file its brief has expired. The cost of sending  
44 the copy of the record to and from the borrowing party shall be treated as a cost on  
45 appeal under rule 8.891(d)(1)(B).

1  
2 **Rule 8.714. Superior court clerk duties**

3  
4 Within five court days following the filing of a notice of appeal under rule 8.712, the superior  
5 court clerk must:

6  
7 (1) Serve the following on each party:

8 (A) Notification of the filing of the notice of appeal; and

9 (B) A copy of the register of actions, if any.

10  
11  
12 (2) Transmit the following to the reviewing court clerk:

13 (A) A copy of the notice of appeal, with the copies of the order being appealed and  
14 the order granting preference under Code of Civil Procedure section 36  
15 attached; and

16 (B) A copy of the appellant's notice designating the record;  
17  
18  
19  
20  
21

22 **Rule 8.715. Briefing**

23  
24 **(a) Time to serve and file briefs**

25  
26 Unless otherwise ordered by the reviewing court:

27 (1) An appellant must serve and file its opening brief within 10 days after the notice of  
28 appeal is served and filed.

29 (2) A respondent must serve and file its brief within 25 days after the appellant files its  
30 opening brief.

31 (3) An appellant must serve and file its reply brief, if any, within 15 days after the  
32 respondent files its brief.

33  
34  
35  
36  
37 **(b) Contents and form of briefs**

38 (1) The briefs must comply as nearly as possible with rule 8.204.

39 (2) If a designated reporter's transcript has not been filed at least 5 days before the date  
40 by which a brief must be filed, an initial version of the brief may be served and filed  
41 in which references to a matter in the reporter's transcript are not supported by a  
42 citation to the volume and page number of the reporter's transcript where the matter  
43 appears. Within 10 days after the reporter's transcript is filed, a revised version of  
44 the brief must be served and filed in which all references to a matter in the reporter's  
45  
46

1 transcript must be supported by a citation to the volume and page number of the  
2 reporter's transcript where the matter appears. No other changes to the initial version  
3 of the brief are permitted.  
4

5 **(d) Stipulated extensions of time to file briefs**  
6

7 If the parties stipulate to extend the time to file a brief under rule 8.212(b), they are deemed  
8 to have agreed that such an extension will promote the interests of justice, that the time for  
9 resolving the action may be extended beyond 100 days by the number of days by which the  
10 parties stipulated to extend the time for filing the brief, and that to that extent, they have  
11 waived any objection to noncompliance with the deadlines for completing review stated in  
12 Code of Civil Procedure section 1294.4 for the duration of the stipulated extension.  
13

14 **(e) Failure to file brief**  
15

16 If a party fails to timely file an appellant's opening brief or a respondent's brief, the  
17 reviewing court clerk must serve the party with a notice indicating that if the required brief  
18 is not filed within two court days of service of the clerk's notice, the court may impose  
19 one of the following sanctions:  
20

- 21 (1) If the brief is an appellant's opening brief, the court may dismiss the appeal;
- 22
- 23 (2) If the brief is a respondent's brief, the court may decide the appeal on the record,  
24 the opening brief, and any oral argument by the appellant; or
- 25
- 26 (3) Any other sanction that the court finds appropriate.  
27

28 **Rule 8.716. Oral argument**  
29

30 The reviewing court clerk must send a notice of the time and place of oral argument to all parties  
31 at least 10 days before the argument date. The presiding justice may shorten the notice period for  
32 good cause; in that event, the clerk must immediately notify the parties by telephone or other  
33 expeditious method.  
34

35

36 **Rule 8.717. Extensions of time**  
37

38 The Court of Appeal may grant an extension of the time in appeals governed by this chapter only  
39 if good cause is shown and the extension will promote the interests of justice.  
40  
41  
42

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**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Assisted Living Association by Heather S. Harrison Vice President of Public Policy Sacramento, CA	AM	<p>On behalf of the California Assisted Living Association (CALA), I am submitting these comments regarding Proposal SP16-13, proposed amendments to the California Rules of Court 8.104 and 8.710 through 8.717.</p> <p>CALA addresses its comments to the question of whether it is preferable to have a longer notice of appeal period and a shorter time for filing the appellant's opening brief or the alternative of having only five days to file a notice of appeal and a longer period for filing the appellant's opening brief. CALA concludes that it is preferable to have a shorter notice of appeal period to allow for an adequate period to prepare and file appellant's opening brief and to ensure both appellant and appellee have similar time period for preparing briefs without penalizing the appellant for filing a notice of appeal right away.</p> <p>A party will generally need less time to decide whether to appeal an adverse ruling and more time to prepare the appellate brief. Typically, a party whose petition to compel arbitration has been denied will not need a full twenty days to decide whether to appeal the court's decision. And once that decision is made, preparing and filing the notice of appeal itself is not time consuming. Accordingly, reducing the time to file the notice of appeal to five days is unlikely to pose a hardship. Preparing an appellate brief in ten days, however, may be quite burdensome.</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period.</p> <p>Under these proposed rules, the appellant would have a total of 30 days to both determine whether to file an appeal and to prepare and file an opening brief. This gives the appellant a slightly longer time to prepare its opening brief than the 25-day period provided for the respondent to prepare its brief. The proposal circulated for public comment divided this total 30-day period by providing 20 days before the notice of appeal must be filed and 10 days after the notice of appeal is filed until the appellant's opening brief is due. Shortening the notice of appeal period and lengthening the briefing time as suggested by the commentator will simply change how this period is divided; it will not increase the overall length of time available for the appellant to prepare its opening brief.</p> <p>As noted by another commentator, because the notice of appeal period is jurisdictional, making the notice of appeal period shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 5-day or even 10-day notice of appeal period will create potential conflicts with the deadline for filing a</p>

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	Commentator	Position	Comment	Committee Response
			<p>On balance, therefore, more time should be allotted to preparation of the appellate brief than filing the notice of appeal.</p> <p>Fairness also weighs in favor of increasing the briefing period. Both appellants and appellees should have similar time to prepare their briefs. Although an appellant could delay filing a notice of appeal until the end of the twenty-day notice-of-appeal deadline to allow more time to draft the opening brief, an appellant may want to file the notice of appeal quickly. For example, an appellant may want to appeal immediately and ask the appellate court to stay trial court proceedings pending appeal. Under the proposed rules, an appellant who files a notice of appeal early would be penalized with fewer days to prepare the appellate brief. In this scenario, an appellant must choose between (1) accessing appellate court remedies as soon as possible and (2) having adequate time to prepare the appellate brief. Appellants should not be forced to make such a choice.</p> <p>CALA asks the Council to modify the proposed rule to reallocate the days for filing the notice of appeal and the appellant's brief so that both appellant and appellee have similar and adequate time to prepare their briefs without penalizing the appellant for seeking appellate court remedies quickly.</p>	<p>motion for reconsideration in the trial court. Finally, increasing the time for filing the opening brief will reduce the already short time that the Court of Appeal has to issue its decision in these cases.</p> <p>The longer notice of appeal period does mean that an appellant would have to sacrifice briefing time if he or she wants to file the notice of appeal early for purposes of obtaining a stay of any trial court proceedings. However, the appellant could still seek a stay of any trial court proceedings even if the notice on appeal had not yet been filed.</p>

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	Commentator	Position	Comment	Committee Response
			<p>CALA further notes that the reference to "rule 3.2237" in proposed Rule 8.712(c)(1) appears to be in error.</p>	<p>The committee appreciates the commentator pointing out this error. Based on other comments, the committee has revised the proposal to delete this provision in its entirety.</p>
2.	<p>Consumer Attorneys of California by Saveena K. Takhar Associate Staff Counsel Sacramento, CA</p>	NI	<p>I write on behalf of the Consumer Attorneys of California (CAOC) to comment on Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration. CAOC generally supports the proposed rules, but has technical concerns with some of the proposed terminology and procedure outlined below.</p> <p><b>Background</b> Consumer Attorneys of California co-sponsored by SB 1065 (Monning), along with the California Advocates for Nursing Home Reform and the Congress of California Seniors. SB 1065, signed by Governor Brown, will ensure speedy access to justice for victims of elder abuse who have proven to the court they are elderly and dying and have been granted a trial court preference by providing that when there is an appeal from an order dismissing or denying a petition to compel arbitration, the court of appeal must issue its decision within 100 days after the notice of appeal is filed.</p> <p><u>8.712(b) – Time to appeal</u> CAOC is concerned about the references to a judgment in both subsections (b)(1) and (b)(2). An order denying arbitration would not result in a judgment of any kind. The references in 8.712</p>	<p>Under the definitions used in the Appellate Rules, the term “judgment” includes any judgment or order that may be appealed. However, since this chapter is limited to appeals from orders dismissing or denying petitions to</p>

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	Commentator	Position	Comment	Committee Response
			<p>(b)(1) and (2) should instead refer to an order, not a judgment, because the applicable document at this phase of the case is an appealable order.</p> <p><u>8.712(c) – Extending the time to appeal</u> CAOC recommends that 8.712(c) be deleted in its entirety.</p> <p>Subsection (c)(1) creates a procedure for filing a motion for a new trial. This is not relevant or necessary because motions for new trials are not filed after an order compelling arbitration.</p> <p>Subsection (c)(2) discusses motions to vacate judgment, as stated above, no judgment results from an order to compel arbitration. Subsection (c)(3) regarding motions for reconsideration is at odds with the statute as well. Defendants have the right of immediate appellate review, so subsection (c)(3) is not necessary.</p> <p><u>8.713 &amp; 8.715 – Record on appeal &amp; briefing</u> One other possible problem CAOC would like to highlight is the interplay between designating the record on appeal in 8.713 and the briefing schedule in 8.715, which requires the appellant to file the opening brief on the same day the court reporter may file the transcript. The solution would be to instead change the designation of record rule, 8.713, to require appellant to file a certified copy of the reporters’ transcript along with the Notice of Appeal, which would also eliminate the need for 8.715(c)(2).</p>	<p>compel arbitration, the committee has revised the proposed rule to refer to orders.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5). The committee’s view is that the rules should reflect the availability of this procedure in the trial court.</p> <p>The committee appreciates this suggestion, but requiring appellants to obtain and file a certified transcript with their notice of appeal would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a rule at a later date.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	Court of Appeal, Second Appellate District by Thomas Kallay, Managing Attorney	A	<p><b>Comment One</b> We propose that the underscored provision should be added to subdivision (a)(2) of proposed rule 8.712.</p> <p><b><u>Rule 8.712. Notice of appeal</u></b></p> <p><b><u>(a) Contents of notice of appeal</u></b></p> <p>(1)</p> <p>(2) <u>Copies of the order being appealed and the order granting preference under Code Civ. Proc., § 36</u> must be attached to the notice of appeal.</p> <p><b>Comment Two</b> One of the Presiding Justices of this district is of the opinion that extending the time to file the notice of appeal for various post-order events under subdivision (c) of rule 8.712, as well as allowing parties to stipulate for extensions under subdivision (d) of rule 8.715, impermissibly extends beyond 100 days the time to dispose of the appeals that are subject to these proposed rules. This Presiding Justice is of the view that the intent of the legislature is clear that these appeals must be disposed within 100 days and that it is contrary to the demonstrated intent of the legislature to fashion provisions that will permit delays in disposition exceeding 100 days. This problem is acute, in this Presiding Justice’s view, in that post-order proceedings may be drawn out and extended by the vagaries of trial court schedules.</p>	<p>The committee agrees with this suggestion and has modified the proposal as suggested by the commentator.</p> <p>The committee appreciates this input. With respect to subdivision (c) in proposed rule 8.712, based on other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Under the law in effect prior to the enactment of Code of Civil procedure section 1294.4, parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5. The legislation did not eliminate this option. The committee’s view is that the</p>

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				<p>proposed rules should follow the model of rule 8.108 in terms of clarifying how the filing of a motion for reconsideration would impact the time to appeal. The committee does not believe that clarifying this is inconsistent with the intent of the legislation, which is to limit the duration of the appellate proceedings in order to protect the interests of the injured elder person. The proposed language of (c)(3) does not extend the 100-day period specified by Code of Civil Procedure section 1294.4(a ) since that period begins upon the filing of the notice of appeal.</p> <p>With respect to subdivision (d) of proposed rule 8.715, the committee does not believe that this is inconsistent with the underlying intent of the legislation. Such a stipulated extension cannot occur without the agreement of the attorney for the injured elder person. This insures that the elder person’s interests will be protected.</p>
4.	Court of Appeal, Fourth Appellate District, Division One by Hon. Judith McConnell San Diego, CA	NI	<p><b>I. RULE 8.710.</b> Rule 8.710(a) sets forth the scope of application of the new chapter 12 to Title 8, Division 1 of the rules and provides:</p> <p>"The rules in this chapter govern appeals to review a superior court order dismissing or denying a petition to compel arbitration under Code of Civil Procedure section 1294.4."</p> <p>Since Code of Civil Procedure section 1294.4 does not include specific provisions addressing</p>	The committee agrees in concept with the commentator’s suggestion and has modified both the title of the chapter and rule 8.710(a) so that they no longer refer to petitions to compel arbitration under section 1294.4.

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	Commentator	Position	Comment	Committee Response
			<p>petitions to compel arbitration, we suggest a slight re-wording of this rule to specify that the rules in chapter 12 apply to appeals from a superior court order "dismissing or denying a petition to compel arbitration <i>in an action subject to Code of Civil Procedure section 1294.4.</i>" (Italics added.)</p> <p><b>RULE 8.711</b></p> <p>Rule 8.711 sets out the rules for the filing and service of documents in a proceeding specified in Code of Civil Procedure section 1294.4. Paragraph (a) is entitled "Service" and specifies that except as otherwise ordered or required by law, the parties must use a method of service "reasonably calculated to ensure delivery of the document to the parties not later than the close of the business day after the document is filed or lodged with the court." Paragraph (b), which is entitled "Electronic filing and service," incorporates additional requirements for electronic service of documents. Finally, proposed rule 8.715(a) also specifies that unless otherwise ordered by the court, the parties must file all briefs electronically.</p> <p>We suggest that these proposed rules be reorganized so that the requirements for service be set forth in the same paragraph or, at a minimum, that the heading of paragraph (a) be revised to "Method of service." Similarly, we believe that the requirements for electronic filing</p>	<p>The committee agrees with this suggestion and has revised the proposal to consolidate the provisions discussing service and to delete proposed 8.715(a).</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>are adequately set forth in proposed rule 8.711(b), such that proposed rule 8.715(a) may be deleted as superfluous.</p> <p>As to proposed rule 8.711(b)(1), dealing with electronic service, we note there is a typographical error in line 2, with the words "documents" and "electronically" missing a space between them.</p> <p>This paragraph also specifies that self-represented parties are not required to use electronic filing unless the court of appeal orders otherwise. Given the strict time constraints applicable to proceedings subject to these rules, we recommend that the Committee revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court.</p> <p><b>RULE 8.712</b> Rule 8.712 addresses the requirements for the content and timing of the filing of the notice of appeal. Paragraph (b) provides that the notice of</p>	<p>The committee appreciates the commentator pointing out this typographical error. The committee has modified the proposal to correct this error.</p> <p>The committee considered this suggestion but decided that it is preferable to retain the provision allowing the Court of Appeal to order a self-represented parties to file electronically, rather than making electronic filing the default for these parties. The proposed rule’s authorization for the Court of Appeal to order self-represented litigants to file electronically already expands the courts’ authority in these cases. Under rule 8.71, the general rule relating to electronic filing, self-represented litigants cannot be ordered to file electronically. The requirement for an order is designed to ensure that the Court makes a determination that electronic filing is feasible for the self-represented litigant, rather than putting a burden on the self-represented litigant to seek to be excused from electronic filing.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has revised the proposal to eliminate paragraphs (1) and (2), relating to motions for new trials and</p>

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	Commentator	Position	Comment	Committee Response
			<p>appeal must be filed within 20 days of the service by either the superior court or a party (whichever occurs first) of a notice of entry of judgment or a file-endorsed copy of the judgment. Paragraph (c) of that rule provides that the time for filing the notice of appeal is extended where the superior court denies a motion for new trial, a motion to vacate judgment or motion for reconsideration.</p> <p>The Committee comment to the proposed rule provides "It is very important to note that the deadline for filing a notice of appeal may be earlier than the deadline for filing a motion for new trial, a motion for reconsideration, or a motion to vacate the judgment." However, neither the comment nor rule 8.712 provide any guidance or explanation as to whether the rule is intended to (1) bar a notice of appeal that is not filed within the time specified by paragraph (b) even if one of the specified motions is filed after the deadline in (b) has passed, (2) preclude a party from filing any of the specified motions after a notice of appeal is filed in compliance with paragraph (b), or (3) achieve some other result.</p> <p>We urge the Committee to clarify the intent of the rule in this regard and note the following for its consideration: (a) anecdotally, it appears that the use of a motion for new trial or to vacate judgment is very uncommon following the denial or dismissal of a motion to compel arbitration; and (b) extending the time for filing of the notice of appeal to accommodate traditional post-trial</p>	<p>motions to vacate, from subdivision (c). This would leave paragraph (3), relating to motions for reconsideration, and paragraph (4), relating to cross-appeals. Case law indicates that parties may move for reconsideration of an order denying a motion to compel arbitration. See <i>Blake v. Ecker</i> (2001) 93 CA4th 728, 739, 113 CR2d 422, 430 (disapproved on other grounds in <i>Le Francois v. Goel</i> (2005) 35 C4th 1094, 1107, 29 CR3d 249, 260, fn. 5). The committee’s view is that the rules should reflect that this procedure is available in the trial court and should, like rule 8.108, address how the filing of such a motion would impact the time to appeal. Since, under Code of Civil Procedure section 1008, the deadline for filing a motion for reconsideration is “within 10 days after service upon the party of written notice of entry of the order,” the proposed advisory committee comment was incorrect that this deadline would expire before the proposed 20-day notice of appeal period. This advisory committee comment has also been deleted.</p>

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			<p>motions to challenge a judgment or order will significantly prolong the time for resolution of cases the Legislature intended to expedite by enacting Code of Civil Procedure section 1294.4.</p> <p>The Committee has also asked for specific comment on whether rule 8.712(c)(4), which addresses the time for the filing of a cross-appeal, is necessary. Given the strict time constraints of Code of Civil Procedure section 1294.4, we believe that it is.</p> <p><b>RULE 8.713</b>            Rule 8.713 sets forth the applicable requirements for the record on appeal. Paragraph (b)(2) deals with reporter's transcripts and specifies that the reporter has 10 days from notice of the transcript request to prepare and certify the transcript. As civil proceedings in many courts now involve the use of private court reporting services rather than reporters employed by the superior courts, we suggest that the Committee provide further specification in this rule that an extension of time to file and certify a reporter's transcript in a proceeding subject to these rules will only be granted on a showing of exceptional good cause.</p> <p><b>RULE 8.715</b>            Rule 8.715 addresses the requirements for briefing in proceedings subject to Code of Civil Procedure section 1294.4. As noted above, we believe that proposed rule 8.714(a) can be eliminated as superfluous in light of the</p>	<p>The committee considered this suggestion but concluded that it additional language regarding extensions of time not necessary. Under rule 8.60, only the Court of Appeal is authorized to extend the deadline for completing a reporter's transcript, so the court will be able to determine if any such extension is appropriate in these cases.</p> <p>As noted above, the committee has revised the proposal to eliminate 8.714(a), as suggested by the commentator.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>requirements of rule 8.71 l(b)(1 ). In addition, we are concerned that the language of rule 8.714(c)(1), specifying that briefs must comply "as nearly as possible" with traditional requirements for briefs set forth in rule 8.204, is too ambiguous to provide any guidance to parties or the courts as to what is required. We urge the Committee to adopt a more traditional standard (e.g., substantial compliance) for determining the adequacy of briefs.</p> <p>In conclusion, thank you for the opportunity to comment on the proposed rule changes.</p>	<p>With respect to the language of rule 8.71(b)(1), this is modeled on existing rule 8.702(f)(3)(A), which addresses briefs in expedited CEQA appeals. The committee’s view is that these rules should use consistent language for equivalent provisions. Therefore, the committee will consider whether to recommend amending both these provisions at a later date.</p>
5.	<p>Court of Appeal, Fifth Appellate District by Charlene Ynson Court Administrator/Clerk Fresno, CA</p>	AM	<p>Instead of 8.712 (a)(1), there should be a special form for this type of appeal stating the deadlines (in addition the trial court should be required to state the deadlines at the hearing, while providing the special form).</p> <p>8.712(b)- instead of 20 days in (b) it should be 10 or 15 days for the serving of the NOA. (if our time doesn’t start until the NOA is served, then the concern would be not so much about our clock, but about the clock in general since these are cases requiring expedited treatment)</p> <p>8.713(b)(4) because we are recommending changing the times in 8.715 the word “final” can be eliminated on the third line (before opening brief)</p>	<p>The committee appreciates this suggestion, but proposing a new notice of appeal form would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to develop such a form at a later date.</p> <p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. The proposed 20-day notice on appeal period is already 40 days (or two-thirds) shorter than the 60-day period generally applicable in civil appeals to the Court of Appeal. As noted by another commentator,</p>

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	Commentator	Position	Comment	Committee Response
			<p>8.714 change 5 days to 2 days because we need every day we can get and with electronic filing it shouldn't be hard to serve within 2 days; however, if we change the numbers in 8.715 as discussed below, then that would give respondent and appellant equal time after the NOA is filed to file their briefs.</p> <p>8.715 (b)(1) change the 10 days to 15 days, (b)(2) change 25 days to 20 days, (b)(3) change 15 days to 5 days. (The reason for respondent to have 5 days more than appellant is because appellant can start working on their brief as soon as they file the NOA, or even earlier because they probably know they are going to file it during the time in 8.712 (b) "Time to appeal").</p> <p>8.715 (c)-because we are giving appellant 5 more days to file their opening brief either eliminate (c)(2) altogether or reduce 10 days to 5 days.</p> <p>One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a-c))</p> <p>CLARIFICATION TO EARLIER COMMENTS FROM 5TH DCA: I would like to clarify the below questions submitted earlier today - these comments are in</p>	<p>because the notice of appeal period is jurisdictional, making the notice of appeal period even shorter will increase the likelihood that some appellants will miss this deadline and inadvertently lose their right to appeal altogether. In addition, a 10-day notice of appeal period will create potential conflicts with the deadline for filing a motion for reconsideration in the trial court. Finally, the committee does not believe that increasing the time for filing the opening brief by 5 or 10 days will eliminate the potential for the appellant having to file its opening brief before the transcript is available.</p> <p>The committee believes that it is appropriate in this limited group of appeals in which the Legislature has set an extraordinarily short timeframe to give the Court of Appeal the authority to order self-represented litigants to electronically file documents. The committee has revised the proposed language to make it clearer that this authority is limited to these particular appeals.</p>

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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

	Commentator	Position	Comment	Committee Response
			<p>response to the comments from the 4th Appellate District where the suggestion was made to "revise this rule to require a self-represented party to use electronic filing unless otherwise ordered by the court."</p> <p>One last question: Is it practical for the court to order self-represented parties to file electronically when that conflicts with other rules of court? Do we maybe want to clearly state that in this particular instance or case, the self-represented party is ordered to file electronically? (8.711(a))</p> <p>Our question is really, Can we require self-represented parties to use e-filing unless otherwise ordered by the court? and if so, shouldn't we clearly state in the rule that this requirement only applies to these particular cases?</p>	
6.	Curt R. Craton CRATON, SWITZER & TOKAR LLP Long Beach, CA	A	<p>The proposed approach of having a longer notice of appeal period and shorter period for filing the appellant's opening brief is preferable to the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant's opening brief for the following reasons:</p> <p>The deadline to file a notice of appeal is jurisdictional whereas the period for filing the appellant's opening brief is not. If the press of business in an attorney's law practice causes him or her to miss the deadline to file a notice of appeal, the client's rights are prejudiced. By contrast, if the deadline to file a brief is missed, the court of appeal</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p>

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>generally grants an extension or the attorney can seek relief from the default. The latter is less prejudicial to the client.</p> <p>Court Rules ought to account for (to the extent reasonably practicable) the realities of practicing law. On any given day, a typical lawyer places and returns calls with clients, engages in frequent communications with opposing counsel, and must meet constant administrative deadlines in more than one case that the attorney oversees. Many of these deadlines are beyond the attorney’s control because they are set by statute, court rule, or a court order in a pending case. A jurisdictional deadline of only 5 days to file a notice of appeal invites the practical probability of missing the filing deadline. For example, the period of time between the Wednesday before the Thanksgiving holiday and the following Monday is only 4 days. Thus a 5-day deadline to file a notice of appeal in that situation would effectively be reduced to only 1 court day. That problem could be mitigated by making the rule 5 court days. But the point remains: intervening events in the life of an attorney such as a death in the family or even a brief hospital stay due to illness or injury could cause a short deadline to be missed. By contrast, an unforeseeable intervening event such as just described would be grounds for relief from a short deadline to file an opening brief.</p> <p>The consequential effect of missing a jurisdictional deadline is a probable malpractice claim by the</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>aggrieved client against the attorney. By contrast, the ability of an attorney to obtain relief from a missed briefing deadline mitigates the likelihood of a malpractice claim. Accordingly, a short notice of appeal deadline will likely increase court congestion arising from malpractice cases, which easily can be avoided by implementing the proposed longer notice of appeal period with the shorting briefing period.</p> <p>Thank you for considering my comments. Please let me know if I should present my comments in a more formal manner. The instructions that my local bar association sent to me did not indicate the form or manner in which comments should be submitted. It appeared that a mere email to you was all that was required.</p>	
7.	<p>Marci Harness East Palo Alto, CA</p>		<p>Comments not related to proposal.</p>	<p>No response required.</p>
8.	<p>Orange County Bar Association by Michael L. Baroni President New Port Beach, CA</p>	A	<p><b>The Judicial Council requested comments on four points.</b> The first question was: <b>“Whether the proposed amendment to the advisory committee comment to rule 8.104 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.”</b> We believe the proposed amendment to the advisory committee comment to Rule 8.104 is sufficient to provide adequate notice and that more</p>	<p>The committee appreciates this input.</p>

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Committee Response
			<p>information would make the Rule confusing.</p> <p>The second question was: <b>“Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant’s opening brief (which will allow longer periods for the respondent’s and reply briefs) or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant’s opening brief (but which will require shorter periods for the respondent’s and reply briefs in order to comply with the 100-day period for adjudicating appeals).”</b>                      The proposed approach is preferable.</p> <p>The third questions was: <b>“Whether it is necessary for the rules to include a provision such as proposed in 8.712(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal.”</b>                      Rule 8.712(c)(4) appears acceptable as proposed.</p> <p>The last question was: <b>“Whether the proposed rules should include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund.”</b>                      We believe the Judicial Council should follow Rule 8.153 with respect to any lending of the record.</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p> <p>The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter’s transcript deposit.</p>

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
9.	Peter G. Rose Managing Attorney Court of Appeal, First Appellate District	AM	<p>The statute at issue is narrow and it is unlikely my court will be asked to decide many appeals under its terms. But accelerated appeals are becoming more common and I anticipate the rules drafted to implement this statute will be used as a template for future statutes with wider applicability. Therefore I think it is important to respond to this proposal. My comments on this topic are informed by my court’s recent experience deciding an accelerated appeal in a CEQA case under California Rules of Court, rules 8.700 through 8.705. As Managing Attorney for my court, I was able to see how those rules impacted each stage of the decision-making process. That experience leads me to conclude the 100-day period from notice of appeal to decision is too short. As I read the proposed rules, an appellate court will only have about 40 days to read the briefs, conduct the necessary research, write an opinion, hear oral argument, and file an opinion. That is not enough time.</p> <p>I understand the 100-day standard is statutorily mandated and there is nothing the Judicial Council can do to change it. But there is something else the Judicial Council can do.</p> <p>The size of appellate briefs is dictated by the Rules of Court and the proposed rules for this statute allow parties to file full-sized 14,000 word briefs. I believe the size of briefs for this and all other accelerated appeals should be limited. The most recent statistics published by the Judicial Council’s Office of Court Research show the median period between</p>	<p>The committee appreciates this suggestion. However, proposing shorter briefs would be an important substantive change in the proposal that would need to be circulated for public comment before it could be recommended for adoption by the Judicial Council. The committee will therefore consider whether to propose such a change at a later date.</p>

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>the filing of a notice of appeal and the filing of an opinion in a civil case is 509 days. The 100-day period mandated by new Code of Civil Procedure, section 1294.4, subdivision (a) is less than one-fifth of that amount. While a commensurate reduction in the size of the appellate briefs would be justified, it might be too drastic for some members of the bar. A more conservative approach, and one that I urge the Judicial Council to adopt, would be to limit the briefs in this type of appeal to 7,000 words.</p> <p>Limiting the size of briefs is consistent with legislative intent. When the Legislature adopted Code of Civil Procedure section 1294.4, it stated specifically it intended to enact “a limited expedited appeal process.” Shortened briefs are also a practical necessity. It would be difficult for a court to perform all the steps necessary to prepare and file a decision within the time allotted if the parties are allowed to file full-sized 14,000 word briefs. If the size of the briefs is limited, courts will at least have a chance to meet the statutorily mandated 100-day standard.</p>	
10.	<p>Superior Court Los Angeles by Sandra Pigati-Pizano Management Analyst Management Research Unit Los Angeles, CA</p>	AM	<p><i>Whether the proposed amendment to the advisory committee comment to rule 8.14 is sufficient to provide rule users with adequate notice about the nature of the exceptions to the normal time for filing a notice of appeal or whether further information should be incorporated into the text of the rule.</i></p> <p>The proposed amendment is sufficient and consistent with similar rules re 8.702 filing.</p>	The committee appreciates this input.

**ITC SP16-13**

**Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration** (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>Which is preferable – the proposed approach of having a longer notice of appeal period and shorter period for filing the appellant’s opening brief or the alternative approach of having a 5-day notice of appeal period and longer period for filing the appellant’s opening brief.</i>                      From the appeals unit perspective, the latter is preferred. A 5-day notice of appeal period is consistent with (expedited) rule 8.702 in CEQA cases.</p> <p><i>Whether it is necessary for the rules to include a provision such as proposed in 8.71(c)(4) addressing the effect of cross-appeals on the time to file a notice of appeal.</i>                      Yes, a provision re cross-appeals should be included, similar to 8.702(c)(4).</p> <p><i>Whether it is necessary for the rules to include a provision similar to rule 8.703(d)(2)(B) regarding applications for reimbursement of transcript costs from the Transcript Reimbursement Fund.</i>                      The correct rule is 8.702(d)(2)(B). For consistency in the rules there should be included a provision similar to rule 8.702(d)(2)(B) regarding application for reimbursement from the Transcript Reimbursement Fund (TRF). Although the committee elected to exclude a similar provision because of concerns relating to delay in the preparation of the record, and because the ‘appellant in these cases in unlikely to qualify for such reimbursement,’ and as an alternative included</p>	<p>The committee appreciates this input. The committee has considered this and other comments regarding the notice of appeal period. Ultimately, the committee decided not to revise the proposal to shorten the proposed notice of appeal period. Please see the response to the comments of the California Assisted Living Association.</p> <p>The committee appreciates this input. Based this and on other comments, the committee retained the proposed paragraph (c)(4) relating to cross-appeals.</p> <p>The committee appreciates this input. Based on this and other comments, the committee has retained the proposed provision regarding lending the record, but also included a cross-reference to a provision in rule 8.130 allowing a Transcript Reimbursement Fund application to serve as a substitute for the reporter’s transcript deposit.</p>

### ITC SP16-13

#### Appellate Procedure: Expedited Review of Certain Orders Denying Motions to Compel Arbitration (adopt Cal. Rules of Court, rules 8.710 – 8.717)

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	Commentator	Position	Comment	Committee Response
			<p>a provision regarding lending of the record. We would argue that a party electing a reporter's transcript as required for the oral record is ordinarily permitted to apply for reimbursement from the TRF. Unless specifically prohibited from using this fund, consistency in rules is always best for all parties.</p> <p><i>What would the implementation requirements be for the courts?</i> Staff training – 1 hour for review, discussion, identification Creation and testing of docket codes in CMS – 24 hours</p> <p><i>Would 3 months from JC approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input.</p>

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Settled Statements in Unlimited Civil Cases (Amend California Rules of Court, rule 8.137; approve form APP-014; revise form APP-003)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 6 - Settled Statements – Consider whether to recommend amendments to the rule regarding settled statements or a form to address difficulties in the timely preparation of these statements.

*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 SPR17-

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Title	Action Requested
Appellate Procedure: Settled Statements in Unlimited Civil Cases	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend California Rules of Court, rule 8.137; approve form APP-014; revise form APP-003	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Louis R. Mauro, Chair	heather.anderson@jud.ca.gov

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### Executive Summary and Origin

To make the settled statements procedure in unlimited civil cases less burdensome, this proposal would amend the rule regarding settled statements to remove the requirement for obtaining a court order to use this procedure in certain circumstances and would create a new form for appellants to use in preparing proposed statements. This proposal is based on a suggestion from the Clerk/Executive Officer of one of the Courts of Appeal.

### Background

Settled statements are one of the methods permitted under the California Rules of Court to prepare a record of the trial court proceedings for an appeal. A settled statement is a summary of the trial court proceedings prepared by the appellant and approved by the trial court. Rule 8.137 addresses the use of settled statements in appeals to the Court of Appeal in unlimited civil cases. This rule currently reflects a basic presumption that court reporters' transcripts will be available in these unlimited civil cases and a preference for use of these transcripts. Under subdivision (a) of this rule, an appellant must file a motion asking to use a settled statement and must support this motion with a showing that a reporter's transcript is unavailable to the appellant.

Because court reporters are no longer present to record the proceedings in many civil cases, more appellants are now trying to use the settled statements procedure. This approach has proved problematic because appellants, particularly those who are self-represented, have difficulty navigating the motion procedure and preparing proposed statements. If the proposed statements are not appropriately prepared, this creates burdens for the trial court judges who must attempt 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.*

review and certify proposed statements. These problems also affect the Courts of Appeal by delaying or resulting in defaults in these cases.

Statements on appeal, which are essentially the same as settled statements, are also used in appeals to the superior court appellate division. The rules for these appeals do not require the appellant to file a motion to get permission to use a statement on appeal. Furthermore, there is a form to assist litigants, particularly self-represented litigants, in appeals to the appellate division in preparing proposed statements that contain the necessary information.

## **The Proposal**

### **Amendments to rule 8.137**

The Appellate Advisory Committee is proposing amendments to rule 8.137 that are modeled in large part on the rules for statements on appeal in the superior court appellate division. The main substantive changes include:

- Permitting an appellant to use the settled statement procedure without having to file a motion in two circumstances in which a motion would likely have been granted anyway: (1) if the trial court proceedings were not recorded by a court reporter, or (2) if the appellant has received a fee waiver (proposed subdivision (b)(1)). This change is intended to reduce burdens for both appellants and courts;
- Allowing the respondent to pay for a reporter's transcript in cases in which an appellant moves to use a settled statement even though a court reporter did record the proceedings (proposed subdivisions (b)(2)(B) and (e)(1)(B)). This provision is not currently in rule 8.837; it is modeled on a provision in rule 8.702(d)(2)(B) relating to expedited California Environmental Quality Act Cases appeals. This provision is designed to give respondents the opportunity to avoid the delay and burdens associated with preparation of a settled statement by providing a reporter's transcript when one is available;
- Requiring self-represented appellants to use a proposed statement-on-appeal form, discussed below, unless the trial court authorizes them not to (proposed subdivision (c)). This provision is modeled on one in rule 8.837 and is intended to help appellants prepare proposed statements and help produce proposed statements that are easier for the trial court judge to review;
- Adding provisions from rule 8.837 regarding the contents of proposed statements (proposed subdivision (d)). This provision should also help appellants prepare proposed statements and make it easier for the trial court judge to review proposed statements;
- Adding provisions from rule 8.837 regarding the trial court's review of proposed statements (proposed subdivision (f)). This provision should clarify and simplify the procedure for the trial court and bring consistency to the procedures for statements in limited and unlimited civil cases; and

- Adding a provision designed to clarify what should happen when the statement is finalized (proposed subdivision (h)(3)). This provision is designed to reduce delays in the transmission of the record to the Court of Appeal.

### **Proposed form changes**

This proposal also includes proposed revisions to one existing form and proposes a new form.

*Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003) would be revised to reflect the elimination of the requirement to file a motion requesting to use a settled statement if either the proceedings were not recorded by a court reporter or the appellant has received a fee waiver.

Proposed new form *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) is modeled on *Proposed Statement on Appeal (Limited Civil Case)* (form APP-104). It is designed to help appellants prepare their initial proposed statement. It includes spaces and prompts to help appellants identify and include necessary information in their statements. By providing a standardized format and prompting the inclusion of required information, the form is also designed to make these proposed statements easier for the trial judge to review.

The committee would particularly appreciate comments about this proposed new form. As noted above, the form is modeled largely on a form used in limited civil cases, which have a narrower range of case types—for example, they do not include family law cases. In addition, the proceedings are typically shorter and simpler than for unlimited civil cases. The committee would appreciate input on whether, given these differences, a form like APP-014 is likely to be helpful in unlimited civil cases, either as proposed or with additional modifications. Please see the Request for Specific Comments box below.

### **Alternatives Considered**

The committee considered recommending only the clarification to the rule about what happens once a statement has been finalized. The committee concluded, however, that additional changes to the procedure would be helpful in reducing barriers for litigants and burdens on the courts. The committee also considered not recommending proposed new form APP-014, but concluded that the better approach would be to seek input from commentators on whether such a form would be helpful.

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

The committee's intent in making this proposal is to reduce burdens on litigants and trial courts associated with preparing settled statements in unlimited civil cases. The committee would particularly appreciate comments about whether the proposal is likely to achieve this goal.

## 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?
- Would *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014) be helpful to litigants and/or the trial courts?
- What additional items, if any, need to be included on the form?
- Should the form include additional space for the summary of any of the items?
- Are there items for which the summary is always likely to be too long to fit on the form and, therefore, that the form should require be done by way of attachment?
- Should the form include the final section asking the appellant to summarize the final judgment, or should this section be replaced with a requirement to attach a copy of the judgment? Note that the appellant will be required to attach a copy of the judgment to the Civil Case Information Statement, which must be filed in the Court of Appeal at approximately the same time as a proposed statement must be filed in the trial court.
- Rule 8.137 currently allows an appellant to use a settled statement as the record of the document filed in the trial court by attaching copies of the required documents to the statement. Should this option be eliminated given that appellants can use an appendix under rule 8.124 for this same purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### Attachments and Links

1. Proposed amended rule 8.137, at pages 5–11
2. Proposed forms APP-003 and APP-014, at pages 12–22

Rule 8.137 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 2. Civil Appeals**

**Article 2. Record on Appeal**

**Rule 8.137. Settled statement**

**(a) Description**

A settled statement is a summary of the superior court proceedings that is approved by the superior court. An appellant may either elect under (b)(1) or move under (b)(2) to use a settled statement as the record of the oral proceedings in the superior court, instead of a reporter's transcript, and may move to use a settled statement as the record of the written documents from the superior court proceedings, instead of a clerk's transcript or appendix.

**~~(a)~~(b) Motion to use When a settled statement may be used**

(1) An appellant may elect in his or her notice designating the record on appeal under rule 8.121 to use a settled statement as the record of the oral proceedings in the superior court without filing a motion under (2) if:

(A) The designated oral proceedings in the superior court were not reported by a court reporter; or

(B) The appellant has an order waiving his or her court fees and costs.

~~(1)~~(2) An appellant intending to proceed under this rule for reasons other than those listed in (1) must serve and file in superior court with its notice designating the record on appeal under rule 8.121 a motion to use a settled statement instead of a reporter's transcript or both a reporter's and a clerk's transcripts.

~~(2)~~(A) The motion must be supported by a showing that:

~~(A)~~(i) A substantial cost saving will result and the statement can be settled without significantly burdening opposing parties or the court;

~~(B)~~(ii) The designated oral proceedings were not reported or cannot be transcribed; or

1                    ~~(C)(iii)~~ Although the appellant does not have a fee waiver, he or she is unable  
2                    to pay for a reporter's transcript and funds are not available from the  
3                    Transcript Reimbursement Fund (see rule 8.130(c)). ~~A party proceeding~~  
4                    ~~in forma pauperis is deemed unable to pay for a transcript.~~

5  
6                    ~~(3)(B)~~ If the court denies the motion, the appellant must file a new notice designating  
7                    the record on appeal under rule 8.121 within 10 days after the superior court  
8                    clerk sends, or a party serves, the order of denial.

9  
10                  (3) An appellant's notice under (1) or motion under (2) must:

11  
12                  (A) Specify the date of each oral proceeding to be included in the settled statement;

13  
14                  (B) Describe the proceedings specified under (A);

15  
16                  (C) Identify whether each proceeding designated under (A) was reported by a court  
17                  reporter and, if so, for each such proceeding:

18  
19                  (i) Provide the name of the court reporter, if known; and

20  
21                  (ii) Identify whether a certified transcript has previously been prepared by  
22                  checking the appropriate box on *Appellant's Notice Designating Record*  
23                  *on Appeal (Unlimited Civil Cases)* (form APP-003) or, if that form is not  
24                  used, placing an asterisk before that proceeding in the notice.

25  
26                  (4) If the designated oral proceedings in the superior court were reported by a court  
27                  reporter:

28  
29                  (A) Within 10 days after the appellant serves either a notice under (1) or a motion  
30                  under (2), the respondent may serve and file a notice indicating that he or she  
31                  is electing to provide a reporter's transcript in lieu of proceeding with a settled  
32                  statement. The respondent must also either:

33  
34                  (i) Deposit a certified transcript of all of the proceedings designated by the  
35                  appellant under (3) and any additional proceedings designated by the  
36                  respondent under rule 8.130(b)(3)(C); or

37  
38                  (ii) Serve and file a notice that the respondent is requesting preparation, at  
39                  the respondent's expense, of a reporter's transcript of all proceedings  
40                  designated by the appellant under (3) and any additional proceedings  
41                  designated by the respondent. This notice must be accompanied by either  
42                  the required deposit for the reporter's transcript under rule 8.130(b)(1) or

1                    the reporter’s written waiver of the deposit in lieu of all or a portion of  
2                    the deposit under rule 8.130(b)(3)(A).

3  
4                    (B) If the respondent timely deposits the certified transcript as required under (i),  
5                    the appellant’s motion to use a settled statement will be dismissed. If the  
6                    respondent timely files the notice and makes the deposit or files the waiver as  
7                    provided under (ii), the appellant’s motion to use a settled statement will be  
8                    dismissed and the clerk must promptly send the reporter notice of the  
9                    designation and of the deposit, waiver, or both and notice to prepare the  
10                   transcript, as provided under rule 8.130(d).

11  
12 **(b)(c) Time to file; contents of proposed statement**

- 13  
14                   ~~(1) Within 30 days after the superior court clerk sends, or a party serves, an order~~  
15                   ~~granting a motion to use~~ If the respondent does not file a notice under (b)(4)(A)  
16                   ~~electing to provide a reporter’s transcript in lieu of proceeding with a settled~~  
17                   ~~statement, the appellant must serve and file a proposed statement in superior court~~  
18                   ~~within 30 days after filing its notice under (b)(1) or within 30 days after the superior~~  
19                   ~~court clerk sends, or a party serves, an order granting a motion under (b)(2) a~~  
20                   ~~condensed narrative of the oral proceedings that the appellant believes necessary for~~  
21                   ~~the appeal. Subject to the court’s approval in settling the statement, the appellant~~  
22                   ~~may present some or all of the evidence by question and answer.~~  
23  
24                   (2) Appellants who are not represented by an attorney must file their proposed statement  
25                   on *Proposed Statement on Appeal (Unlimited Civil Case)* (form APP-014). For good  
26                   cause, the court may permit the filing of a statement that is not on form APP-014.

27  
28 **(d) Contents of proposed statement**

29  
30 The proposed statement must contain:

- 31  
32 ~~(2)(1)~~ A statement of the points the appellant is raising on appeal. If the condensed  
33                   narrative under (3) covers only a portion of the oral proceedings, describes less than  
34                   all the testimony, the appellant must state the points to be raised on appeal; the  
35                   appeal is then limited to those the points identified in the statement unless the  
36                   reviewing court determines that the record permits the full consideration of another  
37                   point or, on motion, the reviewing court permits otherwise.  
38  
39                   (2) A summary of the trial court’s rulings and judgment.  
40  
41                   (3) A condensed narrative of the oral proceedings that the appellant specified under  
42                   (b)(3).  
43

1 (A) The condensed narrative must include a concise factual summary of the  
2 evidence and the testimony of each witness relevant to the points that the  
3 appellant states under (1) are being raised on appeal. Subject to the court's  
4 approval in settling the statement, the appellant may present some or all of the  
5 evidence by question and answer. Any evidence or portion of a proceeding not  
6 included will be presumed to support the judgment or order appealed from.

7  
8 (B) If one of the points that the appellant states will be raised on appeal is a  
9 challenge to the giving, refusal, or modification of a jury instruction, the  
10 condensed narrative must include any instructions submitted orally and not in  
11 writing and must identify the party that requested the instruction and any  
12 modification.

13  
14 ~~(3)~~(4) An appellant intending to use a settled statement instead of both a reporter's and a  
15 clerk's transcripts must accompany the condensed narrative with copies of all items  
16 required by rule 8.122(b)(1), showing the dates required by rule 8.122(b)(2), and  
17 may accompany the condensed narrative with copies of any document includable in  
18 the clerk's transcript under rule 8.122(b)(3) and (4).

19  
20 **(e) Respondent's response to proposed statement**

21  
22 ~~(4)~~(1) Within 20 days after the appellant serves the condensed narrative, the respondent  
23 may serve and file either:

24  
25 (A) Proposed amendments to the condensed narrative; or

26  
27 (B) A notice indicating that he or she is electing to provide a reporter's transcript  
28 in lieu of proceeding with a settled statement. The respondent must also either:

29  
30 (i) Deposit a certified transcript of all the proceedings specified by the  
31 appellant under (b)(3) and any additional proceedings designated by the  
32 respondent under rule 8.130(b)(3)(C); or

33  
34 (ii) Serve and file a notice that the respondent is requesting preparation, at  
35 the respondent's expense, of a reporter's transcript of all proceedings  
36 specified by the appellant under (b)(3) and any additional proceedings  
37 designated by the respondent. This notice must be accompanied by either  
38 the required deposit for the reporter's transcript under rule 8.130(b)(1) or  
39 the reporter's written waiver of the deposit in lieu of all or a portion of  
40 the deposit under rule 8.130(b)(3)(A).

1 (5)(2) If the respondent serves and files The proposed statement and proposed amendments  
2 under (1)(A), they may be accompanied by copies of any document includable in the  
3 clerk's transcript under rule 8.122(b)(3) and (4).  
4

5 **(e)(f) Settlement, preparation, and certification Review of appellant's proposed statement**  
6

7 (1) The clerk must set a date for a settlement hearing by the trial judge that is No later  
8 than 10 days after the respondent files proposed amendments or the time to do so  
9 expires, whichever is earlier, and must give the parties at least five days' notice of  
10 the hearing date a party may request a hearing to review and correct the proposed  
11 statement. No hearing will be held unless ordered by the trial court judge, and the  
12 judge will not ordinarily order a hearing unless there is a factual dispute about a  
13 material aspect of the trial court proceedings.  
14

15 (2) At the hearing, the judge must settle the statement and fix the times within which the  
16 appellant must prepare, serve, and file it.  
17

18 (2) The trial court judge may order that a transcript be prepared as the record of the oral  
19 proceedings instead of correcting a proposed statement on appeal if the trial court  
20 proceedings were reported by a court reporter, the trial court judge determines that  
21 doing so would save court time and resources, and the court has a local rule  
22 permitting such an order. The court will pay for any transcript ordered under this  
23 subdivision.  
24

25 (3) Except as provided in (2), if no hearing is ordered, no later than 10 days after the  
26 time for requesting a hearing expires, the trial court judge must review the proposed  
27 statement and any proposed amendments filed by the respondent and take one of the  
28 following actions:  
29

30 (A) If the proposed statement does not contain material required under (d), the trial  
31 judge may order the appellant to prepare a new proposed statement. The order  
32 must identify the additional material that must be included in the statement to  
33 comply with (d) and the date by which the new proposed statement must be  
34 served and filed. If the appellant does not serve and file a new proposed  
35 statement as directed, rule 8.140 applies.  
36

37 (B) If the trial judge does not issue an order under (A), the trial judge must either:  
38

39 (i) Make any corrections or modifications to the statement necessary to  
40 ensure that it is an accurate summary of the evidence and the testimony  
41 of each witness relevant to the points that the appellant states under  
42 (d)(1) are being raised on appeal; or  
43

1 (ii) Identify the necessary corrections and modifications, and order the  
2 appellant to prepare a statement incorporating these corrections and  
3 modifications.  
4

5 (4) If a hearing is ordered, the court must promptly set the hearing date and provide the  
6 parties with at least 5 days' written notice of the hearing date. No later than 10 days  
7 after the hearing, the trial court judge must either:  
8

9 (A) Make any corrections or modifications to the statement necessary to ensure  
10 that it is an accurate summary of the evidence and the testimony of each  
11 witness relevant to the points that the appellant states under (d)(1) are being  
12 raised on appeal; or  
13

14 (B) Identify the necessary corrections and modifications and order the appellant to  
15 prepare a statement incorporating these corrections and modifications.  
16

17 (5) The trial court judge must not eliminate the appellant's specification of grounds of  
18 appeal from the proposed statement.  
19

20 **(g) Review of the corrected statement**  
21

22 (1) If the trial court judge makes any corrections or modifications to the proposed  
23 statement under (f), the clerk must serve copies of the corrected or modified  
24 statement on the parties. If under (f) the trial court judge orders the appellant to  
25 prepare a statement incorporating corrections and modifications, the appellant must  
26 serve and file the corrected or modified statement within the time ordered by the  
27 court. If the appellant does not serve and file a corrected or modified statement as  
28 directed, rule 8.140 applies.  
29

30 (2) Within 10 days after the corrected or modified statement is served on the parties, any  
31 party may serve and file proposed modifications or objections to the statement.  
32

33 (3) If the respondent does not object to the prepared statement within five days after it is  
34 filed, it will be deemed properly prepared and the clerk must present it to the judge  
35 for certification. Within 10 days after the time for filing proposed modifications or  
36 objections under (2) has expired, the judge must review the corrected or modified  
37 statement and any proposed modifications or objections to the statement filed by the  
38 parties. The procedures in (2) or in (f)(3) apply if the judge determines that further  
39 corrections or modifications are necessary to ensure that the statement is an accurate  
40 summary of the evidence and the testimony of each witness relevant to the points  
41 that the appellant states under (d)(1) are being raised on appeal.  
42

1 **(h) Certification of the statement on appeal**

2  
3 (1) If the trial court judge does not order the preparation of a transcript under (f)(2) in  
4 lieu of correcting the proposed statement or order any corrections or modifications to  
5 the proposed statement under (f)(3), (f)(4), or (g)(3), the judge must promptly certify  
6 the statement.

7  
8 ~~(4)~~(2) The parties<sup>2</sup> may serve and file a stipulation that the statement as originally served  
9 under (c) or as prepared corrected or modified under (f)(3), (f)(4), or (g)(3) is correct.  
10 Such a stipulation is equivalent to the judge's certification of the statement.

11  
12 (3) Upon certification of the statement under (1) or receipt of a stipulation under (2), the  
13 certified statement must immediately be transmitted to the clerk for filing of the  
14 record under rule 8.150.  
15



CASE NAME:	SUPERIOR COURT CASE NUMBER:
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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 check (a), (b), or (c) below.)*
    - (a)  The oral proceedings in the superior court were not reported by a court reporter.
    - (b)  The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
    - (c)  I am requesting to use a settled statement for reasons other than those listed in (a) or (b). *(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:
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**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:
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**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)

Clerk stamps date here when form is filed.

**Instructions**

- This form is only for preparing a proposed statement on appeal in an **unlimited civil case**.
- This form can be attached to your *Appellant's Notice Designating Record on Appeal (Unlimited Civil Case)* (form APP-003). If it is not attached to that notice, this form must be filed **no later than 30 days after you file that notice. Or, if you had to file a motion requesting to use a settled statement, within 30 days after you are served with an order granting that motion. 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 *Information Sheet for Proof of Service* (form APP-009-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 Court of Appeal case number (if you know it):

**Court of Appeal 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: \_\_\_\_\_

**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 filed a notice designating the record on appeal, electing to use a statement on appeal.
  - The Court sent or the other party served me with an order granting my motion to use a settled statement.

**Proposed Statement**

**4 Reasons for Your Appeal**

*Please note, in an appeal, the Court of Appeal can only review a case for whether certain kinds of legal errors were made:*

- *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 Court of Appeal:*

- *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 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. *(Describe each error and how you were harmed by that error.)*

(1) *Describe the error:* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Describe how you were harmed by the error:* \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) Describe the error: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe how you were 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-014, item 4."

**5 The Dispute**

a. In the trial court, I 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-014, 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-014, 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.

Trial Court Case Name: \_\_\_\_\_

- ⑥
- b.  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-014, 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-014, item 6b(3).”

⑦ **Summary of Testimony and Other Evidence**

- a. Was there a trial in your case?
- No (skip 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 testify at the trial?
- No
- Yes (Write a complete and accurate summary of the testimony you 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 testimony or any exhibits you asked to present and whether these objections were sustained.):
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- Check here if you need more space to summarize your testimony and attach a separate page or pages summarizing this testimony. At the top of each page, write “APP-014, 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.

7 c. (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-014, 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-014, 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-014, 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-014, Item 8.”

Trial Court Case Name: \_\_\_\_\_

**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 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-014, Item 9."*

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

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



\_\_\_\_\_  
*Signature of appellant or attorney*

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form (Amend Cal. Rules of Court, rule 8.144)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 4 - Reporter's transcripts: Consider whether to recommend/support amendments to statute requiring that the original reporter's transcript be in paper format

*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 SPR17-

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Title	Action Requested
Appellate Procedure: Format for Reporter's Transcripts Delivered in Electronic Form	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.144	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding the format of the record on appeal to incorporate requirements for reporters' transcripts that are delivered in electronic form. This proposal is based on a suggestion from a court reporters association.

### Background

Code of Civil Procedure section 271 authorizes courts and parties to receive, on request, copies of reporters' transcripts in "computer-readable form." Subdivision (b) of this statute establishes default standards for the format of such transcripts, but provides that these defaults apply "[e]xcept as modified by standards adopted by the Judicial Council."

Rule 8.144 generally addresses the format of the record on appeal, including the format of reporters' transcripts. Currently, this rule contains only the following provision regarding the format of computer-readable reporters' transcripts:

A computer-readable copy of a reporter's transcript must be in a text-searchable format approved by the reviewing court while maintaining original document formatting.

(Cal. Rules of Court, rule 8.144(a)(4).)

There are additional formatting issues and questions that arise when a transcript is in electronic format that it may be helpful for rule 8.144 to address.

*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 committee is proposing amendments to rule 8.144 to provide additional guidance regarding the format for reporters' transcripts that are delivered in electronic form. To make the overall rule clearer, the committee is also proposing reorganizing some of the existing provisions. The main amendments include:

- Current subdivisions (a), (b), and (c), which establish general formatting requirements for reporters' and clerks' transcripts, would be consolidated into a single subdivision (a), titled *Format*. This should make it easier for rule users to find all of the general formatting requirements. To make this longer subdivision easier to follow, each paragraph would be given a heading. This also preserves the most of the headings now used in subdivisions (b) and (c). In addition, a proposed new requirement that each index begin on a separate page would be placed here, as having each index begin on a separate page would be helpful in all transcripts, whether in paper or electronic form.
- The current provisions that specifically relate to transcripts that are in paper form would be gathered together in a new subdivision (b). This reorganization should make finding these specific formatting requirements easier.
- New subdivision (c) would address the specific requirements for reporters' transcripts in delivered in electronic form, including that the transcript be in a full-text searchable PDF or other searchable format approved by the court; include an electronic bookmark to each heading, subheading, and component of the transcript; and permit users to copy and paste, keeping the original formatting. This new subdivision would include separate paragraphs for both general requirements and special requirements for multireporter or multivolume transcripts that are in electronic format. As with proposed subdivisions (a) and (b), this structure should make it easier for rule users to find all of the requirements relating to reporters' transcripts delivered in electronic form in one place.

Other nonsubstantive changes to the rule are also incorporated in this proposal.

## **Alternatives Considered**

The committee considered not recommending any changes to rule 8.144 but concluded that providing more guidance on the format of reporters' transcripts in electronic form would be helpful.

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

No appreciable implementation requirements, costs, or operation impacts are anticipated.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether it is necessary for the rule to require the court reporter to both digitally and electronically sign a transcript that is delivered in electronic form? If only one requirement were included, which would be preferable?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

Proposed amendments to Cal. Rules of Court, rule 8.144, at pages 4–8

1 Title 8. Appellate Rules

2  
3 Division 1. Rules Relating to the Supreme Court and Courts of Appeal

4  
5 Chapter 2. Civil Appeals

6  
7 Article 2. Record on Appeal

8  
9 Rule 8.144. Form of the record

10  
11 (a) ~~Paper and~~ Format

12  
13 (1) General

14 In the clerk's and reporter's transcripts:

15  
16 (A) All documents filed must have a page size of 8½ by 11 inches. ~~If filed~~  
17 ~~in paper form, the paper must be white or unbleached and of at least 20-~~  
18 ~~pound weight;~~

19  
20 (B) The text must be reproduced as legibly as printed matter;

21  
22 (C) The contents must be arranged chronologically;

23  
24 (D) The pages must be consecutively numbered, except as provided in (e);  
25 and

26  
27 (E) The margin must be at least 1¼ inches from the left edge.

28  
29 ~~(2) If filed in paper form, in the clerk's transcript only one side of the paper may~~  
30 ~~be used; in the reporter's transcript both sides may be used, but the margins~~  
31 ~~must then be 1¼ inches on each edge.~~

32  
33 ~~(3)~~(2) Line numbering

34 In the reporter's transcript the lines on each page must be consecutively  
35 numbered and must be double-spaced or one-and-a-half-spaced; double-  
36 spaced means three lines to a vertical inch.

37  
38 ~~(4) A computer-readable copy of a reporter's transcript must be in a text-~~  
39 ~~searchable format approved by the reviewing court while maintaining~~  
40 ~~original document formatting.~~

1 ~~(5)~~(3) Sealed and confidential records

2 The clerk's and reporter's transcripts must comply with rules 8.45–8.47  
3 relating to sealed and confidential records.

4  
5 ~~(b)~~(4) Indexes

6 Except as provided in rule 8.45, at the beginning of the first volume of each:

7  
8 ~~(1)~~(A) The clerk's transcript must contain alphabetical and chronological  
9 indexes listing each document and the volume, where applicable, and  
10 page where it first appears;

11  
12 ~~(2)~~(B) The reporter's transcript must contain alphabetical and chronological  
13 indexes listing the volume, where applicable, and page where each  
14 witness's direct, cross, and any other examination, begins; and

15  
16 ~~(3)~~(C) The reporter's transcript must contain an index listing the volume,  
17 where applicable, and page where any exhibit is marked for  
18 identification and where it is admitted or refused. The index must  
19 identify each exhibit by number or letter and a brief description of the  
20 exhibit.

21  
22 ~~(D)~~ Each index required by (A), (B), and (C) must begin on a separate  
23 page.

24  
25 ~~(e)~~(5) Binding and Cover

26  
27 ~~(1)~~ If filed in paper form, clerk's and reporter's transcripts must be bound on the  
28 left margin in volumes of no more than 300 sheets.

29  
30 ~~(2)~~(A) Each volume's cover must state the title and trial court number of the  
31 case, the names of the trial court and each participating trial judge, the  
32 names and addresses of appellate counsel for each party, the volume  
33 number, and the inclusive page numbers of that volume.

34  
35 ~~(3)~~(B) In addition to the information required by ~~(2)~~(A), the cover of each  
36 volume of the reporter's transcript must state the dates of the  
37 proceedings reported in that volume.

38  
39 **(b) Additional requirements for record in paper form**

40  
41 In addition to complying with (a), if the record is filed in paper form:

42  
43 (1) The paper must be white or unbleached and of at least 20-pound weight;

1  
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- (2) In the clerk’s transcript only one side of the paper may be used; in the reporter’s transcript both sides may be used, but the margins must then be 1¼ inches on each edge.
- (3) Clerks’ and reporters’ transcripts must be bound on the left margin in volumes of no more than 300 sheets.

**(c) Additional requirements for reporter’s transcript delivered in electronic form**

**(1) General**

In addition to complying with (a), a reporter’s transcript delivered in electronic format must:

- (A) Be generated electronically; it must not be created from a scanned document.
- (B) Be in full text-searchable PDF (portable document format) or other searchable format approved by the court.
- (C) Be paginated beginning with the first page or cover page as page 1 and consecutively numbered using only Arabic numerals (e.g., 1, 2, 3) throughout the document, including indices and certificates. The electronic page counter in a PDF file viewer must match the transcript page numbering.
- (D) Include an electronic bookmark to each heading, subheading, and component of the transcript, including all sessions or hearings (date lines), all witness examinations, the index, and all exhibits. All bookmarks and hyperlinks, when clicked, must retain the user’s currently selected zoom settings.
- (E) Be digitally and electronically signed by the court reporter.
- (F) Permit users to copy and paste, keeping the original formatting, but with headers, footers, line numbers, and page numbers excluded.
- (G) Permit courts to electronically add filed/received stamps.

1           (2) Multivolume or multireporter transcripts

2  
3           In addition to the requirements in (1), multivolume or multireporter  
4           transcripts delivered in electronic format must comply with the following  
5           requirements:

6  
7           (A) Each individual reporter must include the cover page required by (a)(3),  
8           the indexes required by (a)(4), and a digitally and electronically signed  
9           certificate in its respective portion of the transcript.

10  
11          (B) The transcript must be merged into a single electronic document, which  
12          may consist of multiple volumes.

13  
14          (C) The primary reporter must prepare a master index for the merged  
15          transcript that includes all of the information from the indexes required  
16          under (A). This master index must be the first bookmark in the  
17          transcript, regardless of where the master index is located within the  
18          transcript.

19  
20          (3) Additional functionality or enhancements

21  
22          Nothing in this rule prohibits courts from accepting additional functionality  
23          or enhancements in reporters' transcripts delivered in electronic form.

24  
25          (d) \* \* \*

26  
27          (e) **Pagination in multiple reporter cases**

28  
29          (1) In a multiple reporter case, each reporter must estimate the number of pages  
30          in each segment reported and inform the designated primary reporter of the  
31          estimate. The primary reporter must then assign beginning and ending page  
32          numbers for each segment.

33  
34          (2) If a segment exceeds the assigned number of pages, the reporter must number  
35          the additional pages with the ending page number, a hyphen, and a new  
36          number, starting with 1 and continuing consecutively.

37  
38          (3) If a segment has fewer than the assigned number of pages, on the last page of  
39          the segment, before the certificate page, the reporter must add a hyphen to the  
40          last page number used, followed by the segment's assigned ending page  
41          number, and state in parentheses “(next volume and page number is \_\_\_\_).”  
42

1 (f) \* \* \*

2

3

**Advisory Committee Comment**

4

5 **Subdivision (a)(3) and (4)(b).** ~~Subdivision (a)(4) is adopted under Code of Civil Procedure~~  
6 ~~section 271(b), which allows the Judicial Council to adopt format requirements for computer-~~  
7 ~~readable copies of a reporter's transcript. Subdivisions (a)(5) Paragraphs (3) and (b)(4) of~~  
8 subdivision (a) refer to special requirements concerning sealed and confidential records  
9 established by rules 8.45–8.47. Rule 8.45(c)(2) and (3) establishes special requirements regarding  
10 references to sealed and confidential records in the alphabetical and chronological indexes to  
11 clerks' and reporters' transcripts.

12

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Verification of Writ Petitions (Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 12 - Verification of Writ Petitions - Consider whether to recommend amendments to the rules regarding writ petitions to consistently reflect statutory requirements for verification of petitions

*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 SPR17-

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Title	Action Requested
Appellate Procedure: Verification of Writ Petitions	Review and submit comments by Friday, April 28
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee Hon. Louis Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to several rules relating to writ petitions to include provisions reflecting statutory requirements that these petitions be verified. This proposal is in response to a recent Court of Appeal opinion that noted the absence of such a provision in one of these rules.

### Background

The statutes addressing petitions for writs of mandate, certiorari, prohibition, and habeas corpus all require that the petitions seeking these writs must be verified.<sup>1</sup> Some of the California Rules of Court that address these writ petitions also include provisions that specifically require verification, reflecting these statutory requirements. For example, rule 8.486, the general rule relating to petitions for writs of mandate, certiorari, and prohibition in the Supreme Court and Court of Appeal, provides in subdivision (a)(4) that “[t]he petition must be verified.”<sup>2</sup> However, there are some rules relating to writ petitions that do not specifically refer to a verification requirement. For example, rule 8.495, relating to review of Workers’ Compensation Appeals Board cases, does not specifically refer to verification of the petition.

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<sup>1</sup> See Code Civ. Proc., §§ 1069, 1086, 1103; Pen. Code, § 1474.

<sup>2</sup> See also, for example, rule 8.496, relating to review of Public Utilities Commission cases, rule 8.498, relating to review of Agricultural Labor Relations Board and Public Employment Relations Board cases, and rule 8.703, relating to review of California Environmental Quality Act Cases under Public Resources Code sections 21168.6.6, 21178–21189.3, and 21189.50–21189.57.

*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 *New York Knickerbockers v. Workers Compensation Appeals Board* (2015) 240 Cal.App.4th 1229, the Court of Appeal, Second Appellate District, discussed the absence of a provision addressing verification in rule 8.495.

### **The Proposal**

To clarify that the requirement for verification is applicable to all petitions for writs of mandate, certiorari, prohibition, and habeas corpus, the committee proposes to add a provision regarding the verification requirement to all of the rules relating to such petitions in title 8 that do not already include such a provision.

### **Alternatives Considered**

The committee considered not recommending any changes to these rules, but concluded that it would be helpful for all the rules to consistently alert petitioners to the verification requirement.

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

No appreciable implementation requirements, costs, or operational impacts are anticipated.

## **Request for Specific Comments**

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- 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 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

Proposed amendments to rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972

Rules 8.380, 8.384, 8.452, 8.456, 8.495, 8.931, and 8.972 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 8. Appellate Rules**

**Division 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Chapter 4. Habeas Corpus Appeals and Writs**

**Rule 8.380. Petition for writ of habeas corpus filed by petitioner not represented by an attorney**

**(a) Required Judicial Council form**

A person who is not represented by an attorney and who petitions a reviewing court for writ of habeas corpus seeking release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must file the petition on *Petition for Writ of Habeas Corpus* (form MC-275). For good cause the court may permit the filing of a petition that is not on that form, but the petition must be verified.

**(b)–(c) \* \* \***

**Rule 8.384. Petition for writ of habeas corpus filed by an attorney for a party**

**(a) Form and content of petition and memorandum**

(1) A petition for habeas corpus filed by an attorney need not be filed on *Petition for Writ of Habeas Corpus* (form MC-275) but must contain the information requested in that form and must be verified. All petitions filed by attorneys, whether or not on form MC-275, must be either typewritten or produced on a computer, and must comply with this rule and rules 8.40(b)–(c) relating to document covers and 8.204(a)(1)(A) relating to tables of contents and authorities. A petition that is not on form MC-275 must also comply with the remainder of rule 8.204(a) and 8.204(b).

(2)–(3) \* \* \*

**(b)–(d) \* \* \***

1 Chapter 5. Juvenile Appeals and Writs

2  
3 Article 3. Writs

4  
5 Rule 8.452. Writ petition to review order setting hearing under Welfare and Institutions  
6 Code section 366.26

7  
8 (a) Petition

9  
10 (1) \* \* \*

11  
12 (2) The petition must be verified.

13  
14 ~~(2)~~(3) \* \* \*

15  
16 (b)–(i) \* \* \*

17  
18 Rule 8.456. Writ petition under Welfare and Institutions Code section 366.28 to review  
19 order designating or denying specific placement of a dependent child after  
20 termination of parental rights

21  
22 (a) Petition

23  
24 (1) \* \* \*

25  
26 (2) The petition must be verified.

27  
28 ~~(2)~~(3) \* \* \*

29  
30 (b)–(i) \* \* \*

31  
32 Chapter 8. Miscellaneous Writs

33  
34 Rule 8.495. Review of Workers' Compensation Appeals Board cases

35  
36 (a) Petition

37  
38 (1)–(2) \* \* \*

39  
40 (3) The petition must be verified.

41  
42 ~~(3)~~(4) \* \* \*

1 (b)–(c) \* \* \*

2  
3  
4 **Division 2. Rules Relating to the Superior Court Appellate Division**

5  
6 **Chapter 6. Writ Proceedings**

7  
8 **Rule 8.931. Petitions filed by persons not represented by an attorney**

9  
10 **(a) Petitions**

11  
12 A person who is not represented by an attorney and who petitions the appellate division for  
13 a writ under this chapter must file the petition on *Petition for Writ (Misdemeanor,*  
14 *Infraction, or Limited Civil Case)* (form APP-151). For good cause the court may permit  
15 an unrepresented party to file a petition that is not on form APP-151, but the petition must  
16 be verified.

17  
18 (b)–(d) \* \* \*

19  
20 **Division 3. Rules Relating to Appeals and Writs in Small Claims Cases**

21  
22 **Chapter 2. Writ Petitions**

23  
24 **Rule 8.972. Petitions filed by persons not represented by an attorney**

25  
26 **(a) Petitions**

27  
28 (1) A person who is not represented by an attorney and who requests a writ under this  
29 chapter must file the petition on a *Petition for Writ (Small Claims)* (form SC-300).  
30 For good cause the court may permit an unrepresented party to file a petition that is  
31 not on that form, but the petition must be verified.

32  
33 (2)–(3) \* \* \*

34  
35 (b)–(d) \* \* \*

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Designation of the Record in Limited Civil Cases (Revise Appellant's Notice Designating Record on Appeal (Limited Civil Case) (form APP-103) and Information on Appeal Procedures for Limited Civil Cases (form APP-101-INFO))

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 7 - Record Designation in Limited Civil Appeals – Consider whether to recommend revisions to the form for designating the record in limited civil appeals to address concerns about frequent defaults by appellant and Item 19 - Appellate Division forms – Consider recommending revisions to various appellate division forms to make them clearer and easier to use

*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

**SPR17-**

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Title	Action Requested
Appellate Procedure: Designation of the Record in Limited Civil Cases	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise <i>Appellant's Notice Designating Record on Appeal (Limited Civil Case)</i> (form APP-103) and <i>Information on Appeal Procedures for Limited Civil Cases</i> (form APP-101-INFO)	January 1, 2018
	Contact
	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov
Proposed by	
Appellate Advisory Committee Hon. Louis Mauro, Chair	

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing revisions to the form that appellants in limited civil cases may use to designate the record on appeal. The proposed revisions are intended to (1) clarify the consequences for an appellant of choosing not to designate a record of the oral proceedings in the trial court, (2) make it easier for the appellant to identify what portions of an electronic recording the appellant wants transcribed, and (3) provide spaces where the appellant can indicate that one of the permissible alternatives to a deposit for a court reporter's transcript is being used. This proposal is in response to suggestions received from two superior courts.

### Background

*Appellant's Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) is the Judicial Council form that appellants in limited civil appeals can use to designate the record on appeal.

Form APP-103 currently addresses the designation of the record of the documents first, and then the designation of the record of the oral proceedings in the trial court. Because some of the options for the record of the oral proceedings can also be used to provide a record of the documents, the current form has internal cross-references. A superior court has reported that these cross-references are confusing to some appellants and result in record designation errors.

*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 portion of form APP-103 that addresses designation of the record of the oral proceedings includes language cautioning appellants about the potential consequences if they choose not to designate a record of the oral proceedings. A superior court has suggested that this language does not sufficiently alert appellants that they may not be able to appeal on certain grounds, such as sufficiency of the evidence, if they do not designate a record of the oral proceedings.

Under the rules relating to transcripts prepared from official electronic recordings, the procedures in rule 8.130 of the California Rules of Court are to be followed in designating the proceedings to be transcribed from such a recording. Currently, however, form APP-103 does not have a space that appellants can use for this purpose.

Under the rules relating to reporters' transcripts, if an appellant deposits funds with the clerk to pay for a reporter's transcript, the appellant must also pay a fee to the court for holding these funds in trust. Currently, however, form APP-103 does not include any notice of this deposit fee. In addition, under these same rules, instead of depositing the estimated cost of a reporter's transcript that the appellant has designated, the appellant can deposit certified transcripts of the designated proceedings or a copy of an application the appellant has filed with the Transcript Reimbursement Fund. Currently, however, form APP-103 does not have a space that appellants can use to indicate that they are using one of these alternatives.

## **The Proposal**

The committee is proposing to revise form APP-103 to address all of the concerns outlined above. These proposed revisions include:

- Reorganizing the form so that the designation of the record of the oral proceedings comes first. This will eliminate the internal cross-references that were confusing to some appellants. The committee is also proposing non-substantive changes in *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to reflect this reorganization of APP-103.
- Revising the cautionary language about not designating a record of the oral proceedings to clarify that certain bases for appeal will not be available with this record.
- Adding a place where appellants can designate what proceeding contained in an official electronic recording that they are requesting be transcribed.
- Adding information about the fee for depositing funds with the court for a reporter's transcript.
- Adding places where appellants can indicate if they are using one of the permissible alternatives to making a deposit for a designated reporter's transcript.

## **Alternatives Considered**

The committee considered not recommending any changes to form APP-103 but concluded that these changes would be helpful to clarify appellants' options and obligations, and the consequences of designation choices they might make.

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

No appreciable implementation requirements, costs, or operation impacts are anticipated.

### **Request for Specific Comments**

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- 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 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

## **Attachments and Links**

1. Proposed revisions to form APP-103
2. Proposed revisions to form APP-101-INFO

**Appellant's Notice Designating  
Record on Appeal  
(Limited Civil Case)**

Clerk stamps date here when form is filed.

**DRAFT**  
**Not Approved by the  
Judicial Council****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: \_\_\_\_\_

### 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 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 want to raise any issue in your appeal that would require the appellate division to consider what was said in the trial court, you will need to provide the appellate division with a record of those oral proceedings. For example, if you are claiming that there was not evidence supporting the judgment, order, or other decision you are appealing, you will need to provide a record of the oral proceedings.*

**3** 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 **4**; go to item **5**). I understand that if I elect to proceed without providing a record of the oral proceedings, the appellate division will not be able to review any issues I might want to raise about what was said in the trial court during those proceedings or any claim that there was not evidence to support the judgment, order or decision I am appealing.

(Write initials here): \_\_\_\_\_

b.  WITH a record of the oral proceedings in the trial court (complete item **4** 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): \_\_\_\_\_

**4** 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 4a.”



Trial Court Case Name: \_\_\_\_\_

4 (continued)

(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 4a(2)."

(3)  **Certified transcripts.** I have attached to this Notice Designating Record on Appeal an original certified transcript of all the proceedings I have designated in (1). The transcript complies with the format requirements in rule 8.144 of the California Rules of Court. Under rule 8.834; no payment is due for this transcript (skip the rest of 4 and go to 5).

(4) **Payment for reporter's transcript.**

(a)  I will pay for the reporter's transcript I have designated in (1). Within 10 days of getting the reporter's estimate of the cost of the transcript, I will:

Deposit an amount equal to the estimated cost with the trial court, and a fee of \$50 for the superior court to hold this deposit in trust. I understand that if I do not comply with this, my appeal may be dismissed.

File with the trial court a copy of the written waiver of deposit signed by the reporter(s). I understand that if I do not comply with this, my appeal may be dismissed.

(b)  I am unable to afford the cost of the reporter's transcript I have designated in (1) and am therefore applying to the Transcript Reimbursement Fund to pay for this transcript. Within 10 days of receipt of the court reporter's estimate of the costs for these transcripts, I will file with the trial court a copy of my application to the Court Reporters Board for payment or reimbursement from the Transcript Reimbursement Fund.

(5) **Format of reporter's transcript.** I request that the reporter provide my copy of the reporter's transcript in:

(a)  Paper format only.

(b)  Electronic format only.

(c)  Both paper and electronic 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. Identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings, and if you know it, the name of the electronic recording monitor who recorded the proceedings:

Date	Department	Description	Electronic Monitor's Name
(a)			
(b)			
(c)			

Check here if you need more space to describe the proceeding or to list other proceedings and attach a separate page(s) describing or listing those proceedings. At the top of each page, write "APP-103, item 4b."



Trial Court Case Name: \_\_\_\_\_

4

(continued)

*(Check and complete (1) or (2).):*

- (1)  I will pay the trial court clerk for this transcript myself within 10 days of receipt of the clerk's estimate of the costs of the transcript. I understand that if I do not pay for the transcript, my appeal may be dismissed.
- (2)  I am asking that the transcript be provided at no cost to me because I cannot afford to pay this cost. I have attached *(check (a) or (b) and attach the appropriate document)*:
- (a)  An order granting a waiver of the cost under rules 3.50–3.58, and 8.818(d).
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58, and 8.818(d). *(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 and 8.818(d).
- (b)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(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

- 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, and if I do not, the court may dismiss my appeal.



4 (continued)

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.

**Record of the Documents Filed in the Trial Court**

5 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	



5 (continued)

(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 5a(2).”*

(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 5a(3).”*



Trial Court Case Name: \_\_\_\_\_

5 (continued)

(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 and 8.818(d).
  - (ii)  An application for a waiver of court fees and costs under rules 3.50–3.58 and 8.818(d). *(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.** *(This option is only available if you have chosen to use an agreed statement as the record of the oral proceedings under item 4 above and you 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 5a(1) above and in rule 8.832 of the California Rules of Court.)*

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

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

 \_\_\_\_\_  
*Signature of appellant or attorney*

## 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—so 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. A record of what was said in the trial court (this is called the “oral proceedings”)
- b. A record of the documents filed in the trial court (other than exhibits)
- c. 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 what was said in the trial court (the “oral proceedings”)

The first 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 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.

#### **b. Record of the documents filed in the trial court**

The **second** 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

**When available:** If you and the respondent have already agreed to use an agreed statement as the record of the oral proceedings (see a.(3) above) and 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.

### 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.

## 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

## 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.

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) 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.

### **(b) 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.

### **(c) 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).

#### **(d) 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.

#### **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.

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Service of Briefs in Misdemeanor Cases (Amend Cal. Rules of Court, rule 8.882)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 13 - Service of briefs – Consider amending the rule on service of briefs in misdemeanor appeals to make it more consistent with the rule relating to briefs in felony appeals

*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 SPR17-

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Title	Action Requested
Appellate Procedure: Service of Briefs in Misdemeanor Cases	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.882	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rule regarding service of briefs in misdemeanor appeals to add provisions requiring the defendant's appellate counsel to send to the defendant a copy of each brief for the defendant. This proposal is based on a suggestion from an attorney.

### Background

California Rules of Court, rule 8.360(d), addresses service of briefs in felony appeals. This rule contains special requirements for defendant's appellate counsel to send a copy of each brief for the defendant to the defendant unless the defendant requests otherwise and for the People to provide counsel for the defendant with two copies of their briefs. The history of this rule indicates that these provisions were adopted to ensure that the defendant was kept apprised of the arguments being made in his or her case.

Rule 8.882 does not currently include similar requirements for the service of briefs by defendant's appellate counsel in misdemeanor cases. There does not appear to be a reason that the rule on misdemeanor briefs should not also include these provisions for keeping the defendant informed.

### The Proposal

The committee is proposing that rule 8.882(e) be amended to apply the same requirements for sending copies of briefs to defendants in misdemeanor appeals that are in rule 8.360(d) governing the service of briefs on defendants in felony appeals.

*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 addition to these substantive amendments, the attached proposal includes a minor technical amendment to correct cross-references in rule 8.882(e)(1) and (4). These paragraphs currently refer to rules 8.25 and 8.29, respectively, both of which address service and filing in the Supreme Court and Courts of Appeal. The proposal would change this reference to rule 8.817, which addresses service and filing in the superior court appellate division.

### **Alternatives Considered**

The committee considered not recommending any changes to these rules, but concluded that it would be appropriate for the rules to treat defendants in felony and misdemeanor appeals similarly with respect to being sent copies of briefs in their cases.

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

No appreciable implementation requirements, costs, or operation impacts are anticipated.

## **Request for Specific Comments**

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rule 8.882, at page 3

Rule 8.882 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 8. Appellate Rules**

**Division 2. Rules Relating to the Superior Court Appellate Division**

**Chapter 4. Briefs, Hearing, and Decision in Limited Civil and Misdemeanor Appeals**

**Rule 8.882. Briefs by parties and amici curiae**

**(a)–(d) \* \* \***

**(e) Service and filing**

- (1) Copies of each brief must be served as required by rule ~~8.25~~ 8.817.
- (2) Unless the court provides otherwise by local rule or order in the specific case, only the original brief, with proof of service, must be filed in the appellate division.
- (3) A copy of each brief must be served on the trial court clerk for delivery to the judge who tried the case.
- (4) A copy of each brief must be served on a public officer or agency when required by rule ~~8.29~~ 8.817.
- (5) In misdemeanor appeals:
  - (A) Defendant’s appellate counsel must serve each brief for the defendant on the People and must send a copy of each brief to the defendant personally unless the defendant requests otherwise.
  - (B) The proof of service under (A) must state that a copy of the defendant’s brief was sent to the defendant, or counsel must file a signed statement that the defendant requested in writing that no copy be sent.
  - (C) The People must serve two copies of their briefs on the appellate counsel for each defendant who is a party to the appeal.

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts (Amend Cal. Rules of Court, rules 8.866 and 8.919)

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee

*Staff contact (name, phone and e-mail):* Heather Anderson, 415-865-7691, [heather.anderson@jud.ca.gov](mailto:heather.anderson@jud.ca.gov)

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

Approved by RUPRO: December 2016

Project description from annual agenda: Item 14 - Payment for transcripts in abandoned appeals – Consider whether to recommend amendments to clarify the payment for partially prepared transcripts in misdemeanor appeals

*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 SPR17-

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Title	Action Requested
Appellate Procedure: Payment for Partially Prepared Reporter's Transcripts	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.866 and 8.919	January 1, 2018
Proposed by	Contact
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

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### Executive Summary and Origin

The Appellate Advisory Committee is proposing amendments to the rules regarding the preparation of reporters' transcripts in misdemeanor and infraction appeals to add language providing for paying court reporters out of funds deposited by an appellant for portions of transcripts that have been prepared at the point the appeal is abandoned or dismissed. This proposal is based on a suggestion received from a court reporters' association.

### Background

Subdivision (f) of rule 8.130, relating to reporters' transcripts in civil appeals to the Court of Appeal, and rule 8.834(d), relating to reporters' transcripts in civil appeals to the superior court appellate division, both provide for paying court reporters for portions of transcripts that were already completed at the point an appeal is abandoned or dismissed using funds deposited by the appellant. In some cases, appellants in misdemeanor and infraction cases also deposit funds to pay for reporters' transcripts. The rules relating to these transcripts do not currently address using the deposited funds to pay for portions of transcripts that have been prepared at the time an appeal is abandoned or dismissed.

### The Proposal

The committee is proposing that rules 8.866 and 8.919, which address reporters' transcripts in misdemeanor and infraction appeals, respectively, be amended to provide that if the appellant deposited funds with the court for a reporter's transcript and the appeal is abandoned or dismissed, the clerk will pay the court reporter out of these deposited funds for the portion of 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.*

transcript that was completed before the abandonment or dismissal of the appeal and will refund any excess deposit to the appellant.

### **Alternatives Considered**

The committee considered not recommending any changes to these rules, but concluded that it would be appropriate for these rules to treat deposits for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed consistent with the way these deposits are treated in civil appeals.

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

These amendments would impose some additional duties on superior court clerks to make payments to court reporters from funds deposited for reporters' transcripts in misdemeanor and infraction appeals that are abandoned or dismissed. The committee believes that the operational impacts of this change are likely to be small because of the small number of cases in which this situation is likely to arise.

### **Request for Specific Comments**

The advisory committee seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

### **Attachments and Links**

1. Proposed amendments to Cal. Rules of Court, rules 8.866 and 8.919, at pages 3–6

Rules 8.866 and 8.919 of the California Rules of Court would be amended, effective January 1, 2018, to read:

**Title 8. Appellate Rules**

**Division 2. Rules Relating to the Superior Court Appellate Division**

**Chapter 3. Appeals and Records in Misdemeanor Cases**

**Article 2. Record in Misdemeanor Appeals**

**Rule 8.866. Preparation of reporter's transcript**

(a)-(c) \* \* \*

**(d) When preparation must be completed**

(1)-(2) \* \* \*

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

**Chapter 5. Appeals in Infraction Cases**

**Article 2. Record in Infraction Appeals**

**Rule 8.919 Preparation of reporter's transcript**

(a)-(c) \* \* \*

**(d) When preparation must be completed**

(1)-(2) \* \* \*

(3) If the appellant deposited with the clerk an amount equal to the estimated cost of preparing the transcript and the appeal is abandoned or dismissed before the reporter has filed the transcript, the reporter must inform the clerk of the cost of the portion of the transcript that the reporter has completed. The clerk must pay that amount to the reporter from the appellant's deposited funds and refund any excess deposit to the appellant.

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2016

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

Criminal Law: Felony Sentencing

Amend rules rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452.

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee (CLAC)

*Staff contact (name, phone and e-mail):*

Tara Lundstrom, 415-865-7995, tara.lundstrom@jud.ca.gov

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

Approved by RUPRO: 12/15/2016

Project description from annual agenda:

Omnibus Rule Proposal: Develop an omnibus rule proposal to update all criminal rules of court to reflect changes to felony sentencing and other relevant laws

*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

SPR17-\_\_\_\_

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**Title**

Criminal Law: Felony Sentencing

**Action Requested**

Review and submit comments by April 28, 2017

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

Amend Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452

**Proposed Effective Date**

January 1, 2018

**Contact**

Tara Lundstrom, Attorney  
415-865-7995

**Proposed by**

Criminal Law Advisory Committee  
Hon. Tricia A. Bigelow, Chair

[tara.lundstrom@jud.ca.gov](mailto:tara.lundstrom@jud.ca.gov)

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules in title 4, division 5 of the California Rules of Court. Conceived as an omnibus proposal to update and simplify these rules, it encompasses a variety of proposed amendments related to changes in California's Determinate Sentencing Law and the passage of the Criminal Justice Realignment Act. Other proposed amendments seek to clarify the application of the rules to indeterminate sentences and provide further guidance to courts on (1) the referral of cases to probation for presentence investigation reports, (2) risk/needs assessments, and (3) sentencing enhancements. Lastly, the proposal contains various nonsubstantive, technical amendments to the rules.

### Background

#### California's Determinate Sentencing Law

The Judicial Council last amended the California Rules of Court in January 1, 2008, to implement changes to California's Determinate Sentencing Law ("DSL") resulting from the U.S. Supreme Court's decision in *Cunningham v. California* (2007) 549 U.S. 270 and the legislative response to that decision (Sen. Bill 40; Stats. 2007, ch. 3). Before *Cunningham* and Senate Bill 40, the DSL and sentencing rules provided three possible terms of imprisonment for state prison commitments and for judges to impose the middle term absent aggravating or mitigating

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circumstances that would justify imposing the lower or upper term. In deciding whether the circumstances of the particular case justified a departure from the middle term, the sentencing judge made factual findings based on a preponderance of the evidence.

In *Cunningham*, the U.S. Supreme Court held that that the DSL was unconstitutional because (1) judges, not juries, were making factual findings to increase a sentence beyond the maximum that could be imposed based on findings made by the jury; and (2) the burden of proof for those findings was a preponderance of the evidence, not beyond a reasonable doubt. (*Cunningham, supra*, 549 U.S. at p. 288.) To address these constitutional defects, the California Legislature subsequently amended the DSL to delete the presumption that judges impose the middle term and to provide instead that judges have discretion to impose any of the three possible terms. (Pen. Code, § 1170(b).) In addition, rather than finding facts, the legislation provides that judges state reasons in support of their choice of the appropriate term.

The Legislature subsequently amended sections 186.22, 186.33, 1170.1, 12021.5, 12022.2, and 12022.4 to eliminate the presumptive middle term for enhancements with sentencing triads. (Sen. Bill 150; Stats. 2009, ch. 171.) Last year, it also amended section 1170(a)(1) to recognize that “the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice.” (Sen. Bill 1016; Stats. 2016, ch. 887, § 5.3.)

### **Criminal Justice Realignment Act**

The Criminal Justice Realignment Act amended several sentencing and supervision provisions to persons convicted of felony offenses and sentenced on or after October 1, 2011. (Assem. Bill 17; Stats. 2011, ch. 12.) Many defendants convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (See Pen. Code, § 1170(h).) In a later amendment to the law, the Legislature mandated that judges suspend execution of a concluding portion of the county jail 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. (*Id.*, § 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (*Id.*, § 1170(h)(5)(B).)

The Realignment Act also created “postrelease community supervision” (“PRCS”), whereby certain offenders released from state prison are no longer supervised by the state parole system but are instead supervised by a local county supervision agency. (*Id.*, §§ 3450–3465.) PRCS 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. (*Id.*, § 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 are instead adversarial judicial proceedings conducted in county superior courts. (*Id.*, § 1203.2.)

The Criminal Law Advisory Committee has undertaken several efforts to update the criminal rules to incorporate changes related to the Realignment Act. Effective January 1, 2015, the

Judicial Council adopted rule 4.415 to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5). It also updated rules 4.411 and 4.411.5, which govern the use and contents of presentence probation reports, by adding references to county jail under section 1170(h).<sup>1</sup> Effective January 1, 2017, the council added references in various criminal rules to mandatory supervision under section 1170(h)(5), PRCS under sections 3450–3464, parole under section 3000.08, and terms of imprisonment in county jail under section 1170(h).

### **Risk/needs assessments**

As part of the rule amendments implementing the Realignment Act that went into effect on January 1, 2015, the Judicial Council also added several provisions related to risk/needs assessments to the criminal rules. In adopting new rule 4.415, the council provided that courts may consider “[t]he defendant’s specific needs and risk factors identified by a validated risk/needs assessment, if available,” to select the appropriate period and conditions of mandatory supervision. In addition, the council amended rule 4.411.5 to require that presentence investigation reports include “[a]ny available, reliable risk/needs assessment information.”

### **The Proposal**

This proposal contains proposed rule amendments intended to update the rules in title 4, division 5 of the California Rules of Court. They include further amendments related to the DSL and the Criminal Justice Realignment Act. Other proposed amendments would clarify the application of the rules to certain indeterminate sentences and would provide further guidance to courts on (1) the referral of cases to probation for investigation reports, (2) risk/needs assessments, and (3) sentencing enhancements.

The proposal includes other nonsubstantive technical amendments.

### **Proposed amendments related to changes to California’s DSL**

The committee proposes the following amendments to reflect changes to California’s DSL post-*Cunningham* and provide further guidance to judges in exercising sentencing discretion under the DSL:

- Amend rule 4.405’s advisory committee comment to update and shorten the historical description of California’s DSL;
- Amend rule 4.406 and its advisory committee comment to provide further guidance for courts on how and when to state their reasons for exercising sentencing discretion under the DSL post-*Cunningham*;

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<sup>11</sup> At the time, commentators raised concerns about the burdens associated with requiring reports in all cases eligible for terms of imprisonment in county jail under section 1170(h). The committee declined their invitation to amend rule 4.411(a) to allow for waivers of presentence reports in “appropriate circumstances” instead of the existing language that discourages waivers except in “unusual circumstances.” The committee explained that because the proposal was “designed to apply existing requirements for presentence probation reports, including longstanding waiver requirements,” the proposed amendment was unnecessary and would inadvertently cause confusion.

- Amend rule 4.408(a) to recognize that the factors listed in the rules for making discretionary sentencing determinations are not exhaustive and do not prohibit a trial judge from using additional criteria reasonably related to the sentencing decision;
- Amend rule 4.410(b) to recognize that a sentencing judge may consider any other facts and circumstances relevant to the case;
- Update rule 4.410's advisory committee comment to reflect SB 1016's amendment to section 1170(a)(1);
- Update rules 4.420 and 4.433 to reflect SB 150's amendments to sentencing triads for enhancements post-*Cunningham*;
- Amend rule 4.420's advisory committee comment to state the proper method for calculating a consecutive sentence;
- Amend rules 4.421(c) and 4.423(c) to recognize that in addition any statutory factors identified as aggravating or mitigating circumstances, the court may consider factors that reasonably relate to the defendant or the circumstances under which the crime was committed;
- Amend rule 4.421's advisory committee comment to recognize that circumstances in aggravation may justify imposition of not only the upper, but also the middle term;
- Amend rule 4.428 to identify factors that a court may consider in selecting the appropriate term for enhancements punishable by one of three terms;
- Amend rule 4.452(2) to incorporate section 1170.1(a)'s definition of "principal term" in relation to consecutive determinate sentences and to provide that "[i]f two terms of imprisonment have the same punishment, either term may be selected as the principal term"; and
- Amend rule 4.452(3) to provide with respect to consecutive determinate sentences that "if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a)."

### **Proposed amendments related to the Criminal Justice Realignment Act**

The committee recommends the following amendments related to statutory changes brought about by the Criminal Justice Realignment Act:

- Amend rule 4.405(2)'s definition of "base term" to recognize that the base term may be a term in county jail under section 1170(h);
- Amend rules 4.411.5(a)(10), 4.435, and 4.451(a) to add references to mandatory supervision and postrelease community supervision;
- Amend rule 4.412's advisory committee comment to reference the "term of imprisonment" instead of the "prison term";
- Amend rule 4.435(a) to provide that in determining whether to permanently revoke supervision, a judge may consider the nature of the violation and the defendant's past performance on supervision;
- Amend rule 4.435(b) and its advisory committee comment to replace references to "probation" with "supervision"; and

- Amend rule 4.435’s advisory committee comment to explain that the holding in *People v. Griffith* (1984) 153 Cal.App.3d 796 refers only to probation, but likely applies to any form of supervision.

### **Proposed amendments related to indeterminate sentences**

The committee proposes the following amendments to expand the application of the rules in title 4, division 5 of the California Rules of Court to certain indeterminate sentences:

- Amend the title of division 5 from “Sentencing Determinate” to “Felony Sentencing Law”;
- Amend rule 4.403 to recognize that the criminal sentencing rules in title 4, division 5, apply to “an indeterminate sentence imposed under section 1168(b) only if it is imposed relative to other offenses with determinate terms or enhancements”;
- Strike statement in rule 4.403’s advisory committee comment that “[t]he sentencing rules do not apply to offenses carrying a life term or other indeterminate sentences for which sentence is imposed under section 1168(b)”;
- Amend rule 4.405(2)’s definition of “base term” to recognize that the base term may be an indeterminate term in prison prescribed by statute; and
- Amend rule 4.451 to address sentences concurrent with an indeterminate term.

### **Proposed amendments related to referrals to probation for investigations and reports**

The committee proposes the following amendments related to court referrals to probation for investigations and reports:

- Amend rule 4.411(a) to identify when a court must refer a case to probation for a presentence investigation report or a supplemental report;<sup>2</sup>
- To reflect current practices, strike the statement in rule 4.411(a) that “[w]aivers of the presentence report should not be accepted except in unusual circumstances”;
- Amend rule 4.411(b) to state how parties may waive the report, to identify the criteria that a court should consider in deciding whether to consent to a waiver, and to clarify that a waiver does not affect the requirement under section 1203c that probation create a report whenever the court commits a person to state prison;
- Move and rephrase the statement in rule 4.411(d) addressing the purpose of presentence investigation reports to the advisory committee comment;
- To reflect current practices, strike the statement in rule 4.411’s advisory committee comment that waivers of the report are discouraged and should be ordered regardless of whether the defendant is eligible for probation; and
- Amend rule 4.411.5(a)(5) to provide that the presentence investigation report must include information about “[a]ny physical or psychological injuries suffered by the victim” and to clarify that the amount of a victim’s loss refers to monetary losses.

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<sup>2</sup> This proposal would also strike subdivision (c) of rule 4.411, which currently addresses supplemental reports, as no longer necessary in light of the revisions to subdivision (a).

### **Proposed amendments related to risk/needs assessments**

The committee proposes the following amendments related to risk/needs assessments and their use by courts:

- Amend rule 4.405(12) to define the term “risk/needs assessment” as “a standardized, validated evaluation tool designed to measure an offender’s actuarial risk factors and specific needs that, if successfully addressed, may reduce the likelihood of future criminal activity”;
- Amend rule 4.411.5(a)(8) to provide that the probation officer’s presentence investigation report must include “[t]he defendant’s relevant risk factors and needs as identified by a risk/needs assessment, if such an assessment is performed, and such other information from the assessment as may be requested by the court”;<sup>3</sup>
- Amend rule 4.413(c) to provide that a court may consider the results of a risk/needs assessment, if one was performed, in deciding whether a defendant has overcome the presumption of ineligibility for probation;<sup>4</sup> and
- Amend the advisory committee comments to rules 4.413 and 4.415 to reference the proposed Standard of Judicial Administration on the use of risk/needs assessments in criminal sentencing that the committee has recommended for circulation for public comment concurrent with this proposal.

### **Proposed amendments related to sentencing enhancements**

The committee proposes the following amendments related to sentencing enhancements generally:

- Add subdivision (b) to rule 4.428 to clarify the court’s authority to strike an enhancement or the punishment for an enhancement under section 1385(a) and (c), and to identify factors a court may consider in determining whether to strike the entire enhancement or only the punishment for the enhancement;
- Add subdivision (b) to rule 4.447 to provide guidance to courts when a defendant is convicted of multiple enhancements of the same type; and
- Amend rule 4.447’s advisory committee comment to provide that a court may stay an enhancement if section 654 applies.

### **Additional technical and nonsubstantive proposed amendments**

The committee proposes the following technical and nonsubstantive amendments:

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<sup>3</sup> Rule 4.411.5(a)(8) currently provides that the report must contain “[a]ny available, reliable risk/needs information.”

<sup>4</sup> This proposed amendment mirrors proposed subdivision (d)(3)(1) of the proposed Standard of Judicial Administration on the use of risk/needs assessments in criminal sentencing that the committee has recommended for circulation for public comment concurrent with this proposal.

- Combine the definitions of “mitigation” and “circumstances in mitigation” in rule 4.405(5) with the definitions of “aggravation” and “circumstances in aggravation” in rule 4.405(4);
- Amend rules 4.408, 4.409, 4.413(c), 4.425, and 4.428, and rule 4.409’s advisory committee comment to reference “factors” or “relevant factors” instead of “criteria” or “facts”;
- Amend rule 4.425(a) to replace “criteria” with “facts”;
- Amend advisory committee comments to rules 4.405 and 4.410 to remove unnecessary statutory references;
- Strike the first sentence of rule 4.408’s advisory committee comment as redundant to the rule as revised;
- Amend the advisory committee comments to rules 4.412 and 4.420 to make nonsubstantive, technical changes;
- Amend the headings to rule 4.413 and its subdivision (b) to clarify that the rule applies to the grant of probation when a defendant is presumptively ineligible for probation;
- Amend rule 4.413(a) to recognize that a defendant is presumptively eligible for probation in most cases, presumptively ineligible in some cases, and ineligible in others;
- Strike parts of the advisory committee comments to rules 4.420 and 4.437 as unnecessary; and
- Revise the language in rule 4.447(a) for clarity.

### **Alternatives Considered**

The committee considered the potential burdens that any rule changes may place on the courts. The committee, however, determined that these amendments are appropriate because they are necessary to conform the rules to the Penal Code and case law.

### **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 [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Effective January 1, 2018, Proposition 63 (The Safety for All Act) will require probation officers to investigate whether persons subject to the firearms and ammunition prohibitions in Penal Code sections 29800 and 29805 have relinquished those items. It also requires that probation officers report their findings to the court before sentencing. Should the new firearms and ammunition reporting requirements be included in rule 4.411.5? If so, why?

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 three and a half 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 Cal. Rules of Court, rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452, at pages 9–29

Rules 4.403, 4.405, 4.406, 4.408, 4.409, 4.410, 4.411, 4.411.5, 4.412, 4.413, 4.415, 4.420, 4.421, 4.423, 4.425, 4.428, 4.433, 4.435, 4.437, 4.447, 4.451, and 4.452 of the California Rules of Court would be amended, effective January 1, 2018, to read as follows:

1 **Title 4. Criminal Rules**

2  
3 **Division 5. Sentencing-Determinate Felony Sentencing Law**

4  
5 **Rule 4.403. Application**

6  
7 These rules apply to criminal cases in which the defendant is convicted of one or more  
8 offenses punishable as a felony by (1) a determinate sentence imposed under Penal Code  
9 part 2, title 7, chapter 4.5 (commencing with section 1170), and (2) an indeterminate  
10 sentence imposed under section 1168(b) only if it is imposed relative to other offenses  
11 with determinate terms or enhancements.

12  
13 **Advisory Committee Comment**

14  
15 ~~The sentencing rules do not apply to offenses carrying a life term or other indeterminate~~  
16 ~~sentences for which sentence is imposed under section 1168(b).~~

17  
18 The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to  
19 the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison  
20 sentences, sentences in county jail under section 1170(h), and the grant or denial of probation.

21  
22 **Rule 4.405. Definitions**

23  
24 As used in this division, unless the context otherwise requires:

25  
26 (1) \* \* \*

27  
28 (2) “Base term” is the determinate term in prison term or county jail under section  
29 1170(h) selected from among the three possible terms prescribed by statute; or the  
30 determinate term in prison term or county jail under section 1170(h) prescribed by  
31 law statute if a range of three possible terms is not prescribed; or the indeterminate  
32 term in prison prescribed by statute.

33  
34 (3) \* \* \*

35  
36 (4) “Aggravation,” ~~or~~ “circumstances in aggravation,” “mitigation,” or “circumstances  
37 in mitigation” mean factors that the court may consider in its broad sentencing  
38 discretion in imposing one of the three authorized terms of imprisonment referred  
39 to in section 1170(b) authorized by statute and under these rules.

40  
41 (5) ~~“Mitigation” or “circumstances in mitigation” means factors that the court may~~  
42 ~~consider in its broad discretion in imposing one of the three authorized terms of~~  
43 ~~imprisonment referred to in section 1170(b) or factors that may justify the court in~~

1 ~~striking the additional punishment for an enhancement when the court has~~  
2 ~~discretion to do so.~~

3  
4 ~~(6)~~(5) “Sentence choice” means the selection of any disposition of the case that does not  
5 amount to a dismissal, acquittal, or grant of a new trial.

6  
7 ~~(7)~~(6) “Section” means a section of the Penal Code.

8  
9 ~~(8)~~(7) “Imprisonment” means confinement in a state prison or county jail under section  
10 1170(h).

11  
12 ~~(9)~~(8) “Charged” means charged in the indictment or information.

13  
14 ~~(10)~~(9) “Found” means admitted by the defendant or found to be true by the trier of fact  
15 upon trial.

16  
17 ~~(11)~~(10) “Mandatory supervision” means the period of supervision defined in section  
18 1170(h)(5)(A), (B).

19  
20 ~~(12)~~(11) “Postrelease community supervision” means the period of supervision governed  
21 by section 3451 et seq.

22  
23 (12) “Risk/needs assessment” means a standardized, validated evaluation tool designed  
24 to measure an offender’s actuarial risk factors and specific needs that, if  
25 successfully addressed, may reduce the likelihood of future criminal activity.

26  
27 (13)–(16) \* \* \*

28  
29 **Advisory Committee Comment**

30  
31 “Base term” is the term of imprisonment selected under section 1170(b) from the three possible  
32 terms. (See section 1170(a)(3); *People v. Scott* (1994) 9 Cal.4th 331, 349.) Following the United  
33 States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. 270, the Legislature  
34 amended the determinate sentencing law to remove the presumption that the court is to impose  
35 the middle term on a sentencing triad, absent aggravating or mitigating circumstances. (See Sen.  
36 Bill 40; Stats. 2007, ch. 3.) It subsequently amended sections 186.22, 186.33, 1170.1, 12021.5,  
37 12022.2, and 12022.4 to eliminate the presumptive middle term for an enhancement. (See Sen.  
38 Bill 150; Stats. 2009, ch. 171.) Instead of finding facts in support of a sentencing choice, courts  
39 are now required to state reasons for the exercise of judicial discretion in sentencing. To comply  
40 with those changes, these rules were also amended. In light of those amendments, for clarity, the  
41 phrase “base term” in (4) and (5) was replaced with “one of the three authorized prison terms.”  
42 This language was subsequently changed to “three authorized terms of imprisonment” to  
43 incorporate county jail sentences under section 1170(h) in light of more recent legislative  
44 amendments to the determinate sentencing law. (See Assem. Bill 109; Stats. 2011, ch. 15.) It is an  
45 open question whether the definitions in (4) and (5) apply to enhancements for which the statute  
46 provides for three possible terms. The Legislature in SB 40 amended section 1170(b) but did not  
47 modify sections 1170.1(d), 12022.2(a), 12022.3(b), or any other section providing for an  
48 enhancement with three possible terms. The latter sections provide that “the court shall impose

1 the middle term unless there are circumstances in aggravation or mitigation.” (See, e.g., section  
2 1170.1(d).) It is possible, although there are no cases addressing the point, that this enhancement  
3 triad with the presumptive imposition of the middle term runs afoul of Cunningham. Because of  
4 this open question, rule 4.428(b) was deleted.

5  
6 “Enhancement.” The facts giving rise to an enhancement, the requirements for pleading and  
7 proving those facts, and the court’s authority to strike the additional term are prescribed by  
8 statutes. See, for example, sections 667.5 (prior prison terms), 12022 (being armed with a firearm  
9 or using a deadly weapon), 12022.5 (using a firearm), 12022.6 (excessive taking or damage),  
10 12022.7 (great bodily injury), 1170.1(e) (pleading and proof), and 1385(c) (authority to strike the  
11 additional punishment). Note: A consecutive sentence is not an enhancement. (See section  
12 1170.1(a); *People v. Tassell* (1984) 36 Cal.3d 77, 90 [overruled on other grounds in *People v.*  
13 *Ewoldt* (1994) 7 Cal.4th 380, 401].)

14  
15 “Sentence choice.” Section 1170(e) requires the judge to state reasons for the sentence choice.  
16 This general requirement is discussed in rule 4.406.

17  
18 “Imprisonment” in state prison or county jail under section 1170(h) is distinguished from  
19 confinement in other types of facilities.

20  
21 “Charged” and “found.” Statutes require that the facts giving rise to all enhancements be charged  
22 and found. See section 1170.1(e).

23  
24 Item (13), see sections 17.5(a)(9) and 3450(b)(9).

25  
26 Item (15), see section 1229(e).

## 27 28 **Rule 4.406. Reasons**

### 29 30 **(a) How given**

31  
32 If the sentencing judge is required to give reasons for a sentence choice, the judge  
33 must state in simple language the primary factor or factors that support the exercise  
34 of discretion ~~or, if applicable, state that the judge has no discretion~~. The statement  
35 need not be in the language of the statute or these rules. It must be delivered orally  
36 on the record. The court may give a single statement explaining the reason or  
37 reasons for imposing a particular sentence or the exercise of judicial discretion, if  
38 the statement identifies the sentencing choices where discretion is exercised and  
39 there is no impermissible dual use of facts.

### 40 41 **(b) When reasons required**

42  
43 Sentence choices that generally require a statement of a reason include, but are not  
44 limited to:

- 45  
46 (1) Granting probation when the defendant is presumptively ineligible for  
47 probation;  
48

- 1           (2) ~~Imposing a prison sentence or sentence in county jail under section 1170(h)~~  
2           ~~and thereby denying probation~~ Denying probation when the defendant is  
3           presumptively eligible for probation;  
4  
5           (3) Declining to commit an eligible juvenile found amenable to treatment to the  
6           Department of Corrections and Rehabilitation, Division of Juvenile Justice ~~an~~  
7           eligible juvenile found amenable to treatment;  
8  
9           (4) Selecting one of the three authorized ~~prison~~ terms in prison or county jail  
10           under section 1170(h) referred to in section 1170(b) for either ~~an offense a~~  
11           base term or an enhancement;  
12  
13           (5)–(6) \* \* \*  
14  
15           (7) ~~Striking the punishment for an enhancement;~~  
16  
17           (8)(7) Waiving a restitution fine;  
18  
19           (9) ~~Not committing an eligible defendant to the California Rehabilitation Center;~~  
20  
21           (10)(8) ~~Striking an enhancement or prior conviction allegation~~ Granting relief  
22           under section 1385(a); and  
23  
24           (11)(9) Denying mandatory supervision in the interests of justice under section  
25           1170(h)(5)(A).

#### Advisory Committee Comment

29 This rule is not intended to expand the statutory requirements for giving reasons, and is not an  
30 independent interpretation of the statutory requirements.

31  
32 The court is not required to separately state the reasons for making each sentencing choice so  
33 long as the record reflects the court understood it had discretion on a particular issue and its  
34 reasons for making the particular choice. For example, if the court decides to deny probation and  
35 impose the upper term of punishment, the court may simply state: “I am denying probation and  
36 imposing the upper term because of the extensive losses to the victim and because the defendant’s  
37 record is increasing in seriousness.” It is not necessary to state a reason after exercising each  
38 decision.

39  
40 The court must be mindful of impermissible dual use of facts in stating reasons for sentencing  
41 choices. For example, the court is not permitted to use a reason to impose a greater term if that  
42 reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the  
43 crime. The court should not use the same reason to impose a consecutive sentence as to impose an  
44 upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to  
45 use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11  
46 Cal.App.4th 102, 106.)

1 Whenever relief is granted under section 1385, the court's reasons for exercising that discretion  
2 must be stated orally on the record and entered in the minutes if requested by a party or if the  
3 proceedings are not recorded electronically or reported by a court reporter. (Pen. Code, §  
4 1385(a).) Although no legal authority requires the court to state reasons for denying relief, such a  
5 statement may be helpful in the appellate review of the exercise of the court's discretion.  
6

7 **Rule 4.408. Criteria Listing of factors not exclusive; sequence not significant**  
8

9 (a) ~~The enumeration in these rules of some criteria for the making of discretionary~~  
10 ~~sentencing decisions does not prohibit the application of additional criteria~~  
11 ~~reasonably related to the decision being made. The listing of factors in these rules~~  
12 ~~for making discretionary sentencing decisions is not exhaustive and does not~~  
13 ~~prohibit a trial judge from using additional factors reasonably related to the~~  
14 ~~decision being made. Any such additional criteria factors must be stated on the~~  
15 ~~record by the sentencing judge.~~

16  
17 (b) \* \* \*

18  
19 **Advisory Committee Comment**  
20

21 ~~Enumerations of criteria in these rules are not exclusive. The variety of circumstances presented~~  
22 ~~in felony cases is so great that no listing of criteria factors could claim to be all-inclusive. (Cf.,~~  
23 ~~Evid. Code, § 351.)~~  
24

25 **Rule 4.409. Consideration of criteria relevant factors**  
26

27 Relevant criteria factors enumerated in these rules must be considered by the sentencing  
28 judge, and will be deemed to have been considered unless the record affirmatively  
29 reflects otherwise.  
30

31 **Advisory Committee Comment**  
32

33 Relevant criteria factors are those applicable to the facts in the record of the case; not all criteria  
34 factors will be relevant to each case. The judge's duty is similar to the duty to consider the  
35 probation officer's report. Section 1203.  
36

37 In deeming the sentencing judge to have considered relevant criteria factors, the rule applies the  
38 presumption of Evidence Code section 664 that official duty has been regularly performed. (See  
39 *People v. Moran* (1970) 1 Cal.3d 755, 762 [trial court presumed to have considered referring  
40 eligible defendant to California Youth Authority in absence of any showing to the contrary, citing  
41 Evidence Code section 664].)  
42

43 **Rule 4.410. General objectives in sentencing**  
44

45 (a) \* \* \*

46  
47 (b) Because in some instances these objectives may suggest inconsistent dispositions,  
48 the sentencing judge must consider which objectives are of primary importance in

1 the particular case. The sentencing judge should be guided by statutory statements  
2 of policy, the criteria in these rules, and ~~the~~ any other facts and circumstances of  
3 relevant to the case.

#### 4 5 **Advisory Committee Comment**

6  
7 Statutory expressions of policy include:

8  
9 ~~Welfare and Institutions Code section 1820 et seq., which provides partnership funding for~~  
10 ~~county juvenile ranches, camps, or forestry camps.~~

11  
12 ~~Section 1203(b)(3), which requires that eligible defendants be considered for probation and~~  
13 ~~authorizes probation if circumstances in mitigation are found or justice would be served.~~

14  
15 ~~Section 1170(a)(1), which~~ expresses the policies of uniformity, proportionality of terms of  
16 imprisonment to the seriousness of the offense, and the use of imprisonment as punishment. It  
17 also states that “the purpose of sentencing is public safety achieved through punishment,  
18 rehabilitation, and restorative justice.”

19  
20 ~~Sections 17.5, 1228, and 3450, which~~ express the policies promoting reinvestment of criminal  
21 justice resources to support community-based corrections programs and evidence-based practices  
22 to improve public safety through a reduction in recidivism.

23  
24 ~~Other statutory provisions that prohibit the grant of probation in particular cases.~~

#### 25 26 **Rule 4.411. Presentence investigations and reports**

##### 27 28 **(a) Eligible defendant When required**

29  
30 ~~If the defendant is eligible for probation or a term of imprisonment in county jail~~  
31 ~~under section 1170(h), the court must refer the matter to the probation officer for a~~  
32 ~~presentence investigation and report. Waivers of the presentence report should not~~  
33 ~~be accepted except in unusual circumstances.~~

34  
35 Except as provided in subdivision (b), the court must refer the case to the probation  
36 officer for:

37  
38 (1) A presentence investigation and report if the defendant:

39  
40 (i) Is statutorily eligible for probation or a term of imprisonment in county  
41 jail under section 1170(h); or

42  
43 (ii) Is not eligible for probation but a report is needed to assist the court  
44 with other sentencing issues, including the determination of the proper  
45 amount of restitution fine;

46  
47 (2) A supplemental report if a significant period of time has passed since the  
48 original report was prepared.

1  
2 **(b) ~~Ineligible defendant~~ Waiver of the investigation and report**

3  
4 ~~Even if the defendant is not eligible for probation or a term of imprisonment in~~  
5 ~~county jail under section 1170(h), the court should refer the matter to the probation~~  
6 ~~officer for a presentence investigation and report.~~

7  
8 The parties may stipulate to the waiver of the probation officer’s investigation and  
9 report in writing or in open court and entered in the minutes, and with the consent  
10 of the court. In deciding whether to consent to the waiver, the court should consider  
11 whether the information in the report would assist in the resolution of any current  
12 or future sentencing issues, or would assist in the effective supervision of the  
13 person. A waiver under this section does not affect the requirement under section  
14 1203c that a probation report be created when the court commits a person to state  
15 prison.

16  
17 **(e) Supplemental reports**

18  
19 ~~The court must order a supplemental probation officer’s report in preparation for~~  
20 ~~sentencing proceedings that occur a significant period of time after the original~~  
21 ~~report was prepared.~~

22  
23 **(d) Purpose of presentence investigation report**

24  
25 ~~Probation officers’ reports are used by judges in determining the appropriate term~~  
26 ~~of imprisonment in prison or county jail under section 1170(h) and by the~~  
27 ~~Department of Corrections and Rehabilitation, Division of Adult Operations in~~  
28 ~~deciding on the type of facility and program in which to place a defendant. The~~  
29 ~~reports are also used by courts in deciding whether probation is appropriate,~~  
30 ~~whether a period of mandatory supervision should be denied in the interests of~~  
31 ~~justice under section 1170(h)(5)(A), and the appropriate length and conditions of~~  
32 ~~probation and mandatory supervision. Section 1203c requires a probation officer’s~~  
33 ~~report on every person sentenced to prison; ordering the report before sentencing in~~  
34 ~~probation ineligible cases will help ensure a well-prepared report.~~

35  
36 **Advisory Committee Comment**

37  
38 Section 1203 requires a presentence report in every felony case in which the defendant is eligible  
39 for probation. Subdivision (a) requires a presentence report in every felony case in which the  
40 defendant is eligible for a term of imprisonment in county jail under section 1170(h). ~~Because~~  
41 ~~such a probation investigation and report are valuable to the judge and to the jail and prison~~  
42 ~~authorities, waivers of the report and requests for immediate sentencing are discouraged, even~~  
43 ~~when the defendant and counsel have agreed to a prison sentence or a term of imprisonment in~~  
44 ~~county jail under section 1170(h).~~

45  
46 When considering whether to waive a presentence investigation and report, courts should  
47 consider that probation officers’ reports are used by: (1) courts in determining the appropriate

1 term of imprisonment in prison or county jail under section 1170(h); (2) courts in deciding  
2 whether probation is appropriate, whether a period of mandatory supervision should be denied in  
3 the interests of justice under section 1170(h)(5)(A), and the appropriate length and conditions of  
4 probation and mandatory supervision; and (3) the Department of Corrections and Rehabilitation,  
5 Division of Adult Operations, in deciding on the type of facility and program in which to place a  
6 defendant.

7  
8 ~~Notwithstanding a defendant's statutory ineligibility for probation or term of imprisonment in~~  
9 ~~county jail under section 1170(h), a presentence investigation and report should be ordered to~~  
10 ~~assist the court in deciding the appropriate sentence and to facilitate compliance with section~~  
11 ~~1203e.~~

12  
13 ~~This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.~~

14  
15 Subdivision ~~(e)~~ (a)(2) is based on case law that generally requires a supplemental report if the  
16 defendant is to be resentenced a significant time after the original sentencing, as, for example,  
17 after a remand by an appellate court, or after the apprehension of a defendant who failed to appear  
18 at sentencing. The rule is not intended to expand on the requirements of those cases.

19  
20 The rule does not require a new investigation and report if a recent report is available and can be  
21 incorporated by reference and there is no indication of changed circumstances. This is particularly  
22 true if a report is needed only for the Department of Corrections and Rehabilitation because the  
23 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in  
24 another case in the same or another jurisdiction within the preceding six months, during which  
25 time the defendant was in custody, and that report is available to the Department of Corrections  
26 and Rehabilitation, it is unlikely that a new investigation is needed.

27  
28 This rule does not prohibit preconviction, preplea reports as authorized by section 1203.7.

29  
30 **Rule 4.411.5. Probation officer's presentence investigation report**

31  
32 **(a) Contents**

33  
34 A probation officer's presentence investigation report in a felony case must include  
35 at least the following:

36  
37 (1)–(4) \* \* \*

38  
39 (5) Information concerning the victim of the crime, including:

40  
41 (A) \* \* \*

42  
43 (B) Any physical or psychological injuries suffered by the victim;

44  
45 ~~(B)~~(C) The amount of the victim's monetary loss, and whether or not it is  
46 covered by insurance; and

47  
48 ~~(C)~~(D) Any information required by law.

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48

(6)–(7) \* \* \*

(8) ~~Any available, reliable risk/needs assessment information.~~ The defendant’s relevant risk factors and needs as identified by a risk/needs assessment, if such an assessment is performed, and such other information from the assessment as may be requested by the court.

(9)–(12) \* \* \*

(b)–(c) \* \* \*

**Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims**

**(a) Defendant’s agreement as reason**

It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting attorney has not expressed an objection to it. The agreement and lack of objection must be recited on the record. This section does not authorize a sentence that is not otherwise authorized by law.

**(b) Agreement to sentence abandons section 654 claim**

By agreeing to a specified term in prison or county jail under section 1170(h) 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.

**Advisory Committee Comment**

**Subdivision (a).** This subdivision is intended to relieve the court of an obligation to give reasons if the sentence or other disposition is one that the defendant has accepted and to which the prosecutor expresses no objection. The judge may choose to give reasons for the sentence even though not obligated to do so.

Judges should also be aware that there may be statutory limitations on “plea bargaining” or on the entry of a guilty plea on the condition that no more than a particular sentence will be imposed. ~~At the time this comment was drafted, s~~ Such limitations appeared, for example, in sections 1192.5 and 1192.7.

**Subdivision (b).** This subdivision is based on the fact that a defendant who, with the advice of counsel, expresses agreement to a specified ~~prison~~ term of imprisonment normally is acknowledging that the term is appropriate for his or her total course of conduct. This subdivision applies to both determinate and indeterminate terms.

1 **Rule 4.413. ~~Probation eligibility when probation is limited~~ Grant of probation when**  
2 **defendant is presumptively ineligible for probation**

3  
4 (a) **Consideration of eligibility**

5  
6 The court must determine whether the defendant is eligible for probation. In most  
7 cases, the defendant is presumptively eligible for probation; in some cases, the  
8 defendant is presumptively ineligible; and in some cases, probation is not allowed.

9  
10 (b) **Probation in ~~unusual~~ cases when defendant is presumptively ineligible**

11  
12 If the defendant comes under a statutory provision prohibiting probation “except in  
13 unusual cases where the interests of justice would best be served,” or a  
14 substantially equivalent provision, the court should apply the criteria in (c) to  
15 evaluate whether the statutory limitation on probation is overcome; and if it is, the  
16 court should then apply the criteria in rule 4.414 to decide whether to grant  
17 probation.

18  
19 (c) **~~Facts showing unusual case~~ Factors overcoming the presumption of**  
20 **ineligibility**

21  
22 The following ~~facts~~ factors may indicate the existence of an unusual case in which  
23 probation may be granted if otherwise appropriate:

24  
25 (1) ~~Facts~~ Factors relating to basis for limitation on probation

26  
27 A ~~fact~~ factor or circumstance indicating that the basis for the statutory  
28 limitation on probation, although technically present, is not fully applicable  
29 to the case, including:

30  
31 (A) The ~~fact~~ factor or circumstance giving rise to the limitation on  
32 probation is, in this case, substantially less serious than the  
33 circumstances typically present in other cases involving the same  
34 probation limitation, and the defendant has no recent record of  
35 committing similar crimes or crimes of violence; and

36  
37 (B) \* \* \*

38  
39 (2) ~~Facts~~ Factors limiting defendant’s culpability

40  
41 A ~~fact~~ factor or circumstance not amounting to a defense, but reducing the  
42 defendant’s culpability for the offense, including:

43  
44 (A)–(C) \* \* \*

45  
46 (3) Results of risk/needs assessment

1  
2 Along with all other relevant information in the case, the court may consider  
3 the results of a risk/needs assessment of the defendant, if one was performed.  
4 The weight of a risk/needs assessment is for the judge to consider in his or  
5 her sentencing discretion.  
6

7 **Advisory Committee Comment**  
8

9 **Subdivision (c)(3).** Standard 4.35 of the California Standards of Judicial Administration provides  
10 courts with additional guidance on using the results of a risk/needs assessment at sentencing.  
11

12 **Rule 4.415. Criteria affecting the imposition of mandatory supervision**  
13

14 **(a)–(b)** \* \* \*

15  
16 **(c) Criteria affecting conditions and length of mandatory supervision**  
17

18 In exercising discretion to select the appropriate period and conditions of  
19 mandatory supervision, factors the court may consider include:  
20

21 (1)–(7) \* \* \*

22  
23 (8) The defendant’s specific needs and risk factors identified by a validated  
24 risk/needs assessment, if available; and  
25

26 (9) \* \* \*

27  
28 **(d)** \* \* \*

29  
30 **Advisory Committee Comment**  
31

32 \* \* \*

33  
34 **Subdivision (a).** \* \* \*

35  
36 **Subdivisions (b)(3), (b)(4), and (c)(3).** \* \* \*

37  
38 **Subdivision (c)(7).** \* \* \*

39  
40 **Subdivision (c)(8).** Standard 4.35 of the California Standards of Judicial Administration provides  
41 courts with additional guidance on using the results of a risk/needs assessment at sentencing.  
42

43 **Rule 4.420. Selection of term of imprisonment**  
44

45 **(a)–(b)** \* \* \*

1 (c) To comply with section 1170(b), a fact charged and found as an enhancement may  
2 be used as a reason for imposing ~~the upper~~ a particular term only if the court has  
3 discretion to strike the punishment for the enhancement and does so. The use of a  
4 fact of an enhancement to impose the upper term of imprisonment is an adequate  
5 reason for striking the additional term of imprisonment, regardless of the effect on  
6 the total term.

7  
8 (d) A fact that is an element of the crime upon which punishment is being imposed  
9 may not be used to impose a ~~greater~~ particular term.

10  
11 (e) \* \* \*

### 12 13 **Advisory Committee Comment**

14  
15 The determinate sentencing law authorizes the court to select any of the three possible terms of  
16 imprisonment even though neither party has requested a particular term by formal motion or  
17 informal argument. Section 1170(b) vests the court with discretion to impose any of the three  
18 authorized terms of imprisonment and requires that the court state on the record the reasons for  
19 imposing that term.

20  
21 It is not clear whether the reasons stated by the judge for selecting a particular term qualify as  
22 “facts” for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified,  
23 judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For  
24 example, the court is not permitted to use a reason to impose a greater term if that reason also is  
25 either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The  
26 court should not use the same reason to impose a consecutive sentence as to impose an upper  
27 term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the  
28 same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11  
29 Cal.App.4th 102, 106.)

30  
31 ~~The rule makes it clear that a fact charged and found as an enhancement may, in the alternative,~~  
32 ~~be used as a factor in aggravation.~~

33  
34 *People v. Riolo* (1983) 33 Cal.3d 223, 227 (and footnote 5 ~~on p. 227~~) held that section 1170.1(a)  
35 does not require the judgment to state the base term (upper, middle, or lower) and enhancements,  
36 computed independently, on counts that are subject to automatic reduction under the one-third  
37 formula of section 1170.1(a).

38  
39 ~~Even when sentencing is under section 1170.1, however, it is essential to determine the base term~~  
40 ~~and specific enhancements for each count independently, in order to know which is the principal~~  
41 ~~term count. The principal term count must be determined before any calculation is made using the~~  
42 ~~one-third formula for subordinate terms.~~

43  
44 ~~In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at~~  
45 ~~an informed decision whether to make terms consecutive or concurrent; and the base term for~~  
46 ~~each count must be stated in the judgment when sentences are concurrent or are fully consecutive~~  
47 ~~(i.e., not subject to the one-third rule of section 1170.1(a)). The proper method to calculate a~~  
48 ~~consecutive sentence is to first determine the sentence for each count, including any appropriate~~  
49 ~~enhancements. The principal term will be the count with the longest term selected by the court, or~~  
50 ~~any count if the terms are of the same length. After the selection of the principal term, the court~~

1 must impose the sentence for any subordinate terms. The sentence for a subordinate term will  
2 generally be one-third of the middle term for that count, unless fully consecutive terms are  
3 authorized under such provisions as section 667.6.

4  
5 **Rule 4.421. Circumstances in aggravation**

6  
7 Circumstances in aggravation include factors relating to the crime and factors relating to  
8 the defendant.

9  
10 (a)–(b) \* \* \*

11  
12 (c) **Other factors**

13  
14 Any other factors statutorily declared to be circumstances in aggravation or which  
15 reasonably relate to the defendant or the circumstances under which the crime was  
16 committed.

17  
18 **Advisory Committee Comment**

19  
20 Circumstances in aggravation may justify imposition of the middle or upper of three possible  
21 terms of imprisonment. (Section 1170(b).)

22  
23 The list of circumstances in aggravation includes some facts that, if charged and found, may be  
24 used to enhance the sentence. Theis rule does not deal with the dual use of the facts; the statutory  
25 prohibition against dual use is included, in part, in the comment to rule 4.420.

26  
27 Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a  
28 taking or loss of great value may be circumstances in aggravation even if not meeting the  
29 statutory definitions for enhancements or charged as an enhancement.

30  
31 Facts concerning the defendant’s prior record and personal history may be considered. By  
32 providing that the defendant’s prior record and simultaneous convictions of other offenses may  
33 not be used both for enhancement and in aggravation, section 1170(b) indicates that these and  
34 other facts extrinsic to the commission of the crime may be considered in aggravation in  
35 appropriate cases. ~~This resolves whatever ambiguity may arise from the phrase “circumstances in~~  
36 ~~aggravation . . . of the crime.” The phrase “circumstances in aggravation or mitigation of the~~  
37 ~~crime” necessarily alludes to extrinsic facts.~~

38  
39 Refusal to consider the personal characteristics of the defendant in imposing sentence ~~would also~~  
40 may raise serious constitutional questions. The California Supreme Court has held that sentencing  
41 decisions must take into account “the nature of the offense and/or the offender, with particular  
42 regard to the degree of danger both present to society.” (*In re Rodriguez* (1975) 14 Cal.3d 639,  
43 654, quoting *In re Lynch* (1972) 8 Cal.3d 410, 425.) In ~~*In re Rodriguez*~~ the court released  
44 petitioner from further incarceration because “[H]it appears that neither the circumstances of his  
45 offense *nor his personal characteristics* establish a danger to society sufficient to justify such a  
46 prolonged period of imprisonment.” (*Id.* at p. 655.) ~~( footnote omitted, emphasis italics added.)~~  
47 “For the determination of sentences, justice generally requires . . . that there be taken into account  
48 the circumstances of the offense together with the character and propensities of the offender.”

1 (*Pennsylvania ex rel. Sullivan v. Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v.*  
2 *Georgia* (1976) 428 U.S. 153, 189.)

3  
4 The scope of “circumstances in aggravation or mitigation” under section 1170(b) is, therefore,  
5 coextensive with the scope of inquiry under the similar phrase in section 1203.

6  
7 The 1990 amendments to this rule and the comment included the deletion of most section  
8 numbers. These changes recognize changing statutory section numbers and the fact that there are  
9 numerous additional code sections related to the rule, including numerous statutory enhancements  
10 enacted since the rule was originally adopted.

11  
12 Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion; cases in  
13 which that possible circumstance in aggravation was relied on were frequently reversed. Some of  
14 the cases that had relied on that circumstance in aggravation were reversed on appeal because  
15 there was only a single victim in a particular count.

16  
17 Old age or youth of the victim may be circumstances in aggravation; see section 1170.85(b).  
18 Other statutory circumstances in aggravation are listed, for example, in sections 422.76, 1170.7,  
19 1170.71, 1170.8, and 1170.85.

#### 20 21 **Rule 4.423. Circumstances in mitigation**

22  
23 Circumstances in mitigation include factors relating to the crime and factors relating to  
24 the defendant.

25  
26 (a)–(b) \* \* \*

#### 27 28 **(c) Other factors**

29  
30 Any other factors statutorily declared to be circumstances in mitigation or which  
31 reasonably relate to the defendant or the circumstances under which the crime was  
32 committed.

#### 33 34 **Advisory Committee Comment**

35  
36 See comment to rule 4.421.

37  
38 This rule applies both to mitigation for purposes of motions under section 1170(b) and to  
39 circumstances in mitigation justifying the court in striking the additional punishment provided for  
40 an enhancement.

41  
42 Some listed circumstances can never apply to certain enhancements; for example, “the amounts  
43 taken were deliberately small” can never apply to an excessive taking under section 12022.6, and  
44 “no harm was done” can never apply to infliction of great bodily injury under section 12022.7. In  
45 any case, only the facts present may be considered for their possible effect in mitigation.

46  
47 See also rule 4.409; only relevant criteria need be considered.

48

1 Since only the fact of restitution is considered relevant to mitigation, no reference to the  
2 defendant's financial ability is needed. The omission of a comparable factor from rule 4.421 as a  
3 circumstance in aggravation is deliberate.

4  
5 **Rule 4.425. Criteria Factors affecting concurrent or consecutive sentences**

6  
7 Criteria Factors affecting the decision to impose consecutive rather than concurrent  
8 sentences include:

9  
10 **(a) Criteria Facts relating to crimes**

11 Facts relating to the crimes, including whether or not:

- 12  
13  
14 (1) The crimes and their objectives were predominantly independent of each  
15 other;  
16  
17 (2) The crimes involved separate acts of violence or threats of violence; or  
18  
19 (3) The crimes were committed at different times or separate places, rather than  
20 being committed so closely in time and place as to indicate a single period of  
21 aberrant behavior.  
22

23 **(b) Other criteria facts and limitations**

24 Any circumstances in aggravation or mitigation may be considered in deciding  
25 whether to impose consecutive rather than concurrent sentences, except:

- 26  
27  
28 (1) A fact used to impose the upper term;  
29  
30 (2) A fact used to otherwise enhance the defendant's sentence in prison or county  
31 jail under section 1170(h); and  
32  
33 (3) A fact that is an element of the crime may not be used to impose consecutive  
34 sentences.  
35

36 **Advisory Committee Comment \* \* \***

37  
38 **Rule 4.428. Criteria Factors affecting imposition of enhancements**

39  
40 **(a) Enhancements punishable by one of three terms**

41  
42 ~~If the judge has statutory discretion to strike the additional term for an enhancement~~  
43 ~~in the furtherance of justice under section 1385(c) or based on circumstances in~~  
44 ~~mitigation, the court may consider and apply any of the circumstances in mitigation~~  
45 ~~enumerated in these rules or, under rule 4.408, any other reasonable circumstances~~  
46 ~~in mitigation or in the furtherance of justice.~~  
47

1        ~~The judge should not strike the allegation of the enhancement.~~

2  
3        If an enhancement is punishable by one of three terms, the court must, in its  
4        discretion, impose the term that best serves the interest of justice and state the  
5        reasons for its sentence choice on the record at the time of sentencing. In exercising  
6        its discretion in selecting the appropriate term, the court may consider factors in  
7        mitigation and aggravation as described in these rules or any other factor authorized  
8        by rule 4.408.

9  
10    **(b) Striking enhancements under section 1385**

11  
12        If the court has discretion under section 1385(a) to strike an enhancement in the  
13        interests of justice, the court also has the authority to strike the punishment for the  
14        enhancement under section 1385(c). In determining whether to strike the entire  
15        enhancement or only the punishment for the enhancement, the court may consider  
16        the effect that striking the enhancement would have on the status of the crime as a  
17        strike, the accurate reflection of the defendant's criminal conduct on his or her  
18        record, the effect it may have on the award of custody credits, and any other  
19        relevant consideration.

20  
21    **Rule 4.433. Matters to be considered at time set for sentencing**

22  
23    (a)    \* \* \*

24  
25    (b)    If the imposition of a sentence is to be suspended during a period of probation after  
26        a conviction by trial, the trial judge must identify and state circumstances that  
27        would justify imposition of one of the three authorized terms of imprisonment  
28        referred to in section 1170(b) or any enhancement, if probation is later revoked.  
29        The circumstances identified and stated by the judge must be based on evidence  
30        admitted at the trial or other circumstances properly considered under rule 4.420(b).

31  
32    (c)    If a sentence of imprisonment is to be imposed, or if the execution of a sentence of  
33        imprisonment is to be suspended during a period of probation, the sentencing judge  
34        must:

35  
36        (1)    Determine, under section 1170(b), whether to impose one of the three  
37        authorized terms of imprisonment referred to in section 1170(b), or any  
38        enhancement, and state on the record the reasons for imposing that term;

39  
40        (2)–(5) \* \* \*

41  
42    (d)    \* \* \*

43  
44    (e)    When a sentence of imprisonment is imposed under (c) or under rule 4.435, the  
45        sentencing judge must inform the defendant:

1 (1)–(2) \* \* \*

2  
3 (3) Of any period of mandatory supervision imposed under section  
4 1170(h)(5)(A) and (B), in addition to any period imprisonment for a violation  
5 of mandatory supervision.  
6

7 **Advisory Committee Comment \* \* \***  
8  
9

10 **Rule 4.435. Sentencing on revocation of probation, mandatory supervision, and**  
11 **postrelease community supervision**  
12

13 (a) When the defendant violates the terms of probation, mandatory supervision, or  
14 postrelease community supervision or is otherwise subject to revocation of  
15 probation supervision, the sentencing judge may make any disposition of the case  
16 authorized by statute. In deciding whether to permanently revoke supervision, the  
17 judge may consider the nature of the violation and the defendant’s past  
18 performance on supervision.  
19

20 (b) On revocation and termination of probation supervision under section 1203.2, when  
21 the sentencing judge determines that the defendant will be committed to prison or  
22 county jail under section 1170(h):  
23

24 (1) If the imposition of sentence was previously suspended, the judge must  
25 impose judgment and sentence after considering any findings previously  
26 made and hearing and determining the matters enumerated in rule 4.433(c).  
27

28 The length of the sentence must be based on circumstances existing at the  
29 time probation supervision was granted, and subsequent events may not be  
30 considered in selecting the base term or in deciding whether to strike the  
31 additional punishment for enhancements charged and found.  
32

33 (2) \* \* \*  
34

35 **Advisory Committee Comment**  
36

37 Subdivision (a) makes it clear that there is no change in the court’s power, on finding cause to  
38 revoke and terminate probation supervision under section 1203.2(a), to continue the defendant on  
39 probation supervision.  
40

41 The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652:  
42 “[T]he primary term must reflect the circumstances existing at the time of the offense.”  
43

44 A judge imposing imprisonment on revocation of probation will have the power granted by  
45 section 1170(d) to recall the commitment on his or her own motion within 120 days after the date  
46 of commitment, and the power under section 1203.2(e) to set aside the revocation of probation,  
47 for good cause, within 30 days after the court has notice that execution of the sentence has  
48 commenced.

1  
2 Consideration of conduct occurring after the granting of probation should be distinguished from  
3 consideration of preprobation conduct that is discovered after the granting of an order of  
4 probation and before sentencing following a revocation and termination of probation. If the  
5 preprobation conduct affects or nullifies a determination made at the time probation was granted,  
6 the preprobation conduct may properly be considered at sentencing following revocation and  
7 termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.) While *People*  
8 *v. Griffiths* refers only to probation, this rule likely will apply to any form of supervision.  
9

#### 10 **Rule 4.437. Statements in aggravation and mitigation**

11  
12 (a)–(e) \* \* \*

#### 13 **Advisory Committee Comment**

14  
15  
16 Section 1170(b) states in part:

17  
18 “At least four days prior to the time set for imposition of judgment, either party or the victim, or  
19 the family of the victim if the victim is deceased, may submit a statement in aggravation or  
20 mitigation to dispute facts in the record or the probation officer’s report, or to present additional  
21 facts.”  
22

23 This provision means that the statement is a document giving notice of intention to dispute  
24 evidence in the record or the probation officer’s report, or to present additional facts.

25 The statement itself cannot be the medium for presenting new evidence, or for rebutting  
26 competent evidence already presented, because the statement is a unilateral presentation by one  
27 party or counsel that will not necessarily have any indicia of reliability. To allow its factual  
28 assertions to be considered in the absence of corroborating evidence would, therefore, constitute a  
29 denial of due process of law in violation of the United States (14th Amend.) and California (art. I,  
30 § 7) Constitutions.  
31

32 ~~“[I]t is now clear that the sentencing process, as well as the trial itself, must satisfy the~~  
33 ~~requirements of the Due Process Clause. Even though the defendant has no substantive right to a~~  
34 ~~particular sentence within the range authorized by statute, the sentencing is a critical stage of the~~  
35 ~~criminal proceeding at which he is entitled to the effective assistance of counsel . . . . The~~  
36 ~~defendant has a legitimate interest in the character of the procedure which leads to the imposition~~  
37 ~~of sentence . . . .” Gardner v. Florida (1977) 430 U.S. 349, 358.~~  
38

39 ~~The use of probation officers’ reports is permissible because the officers are trained objective~~  
40 ~~investigators. Williams v. New York (1949) 337 U.S. 241. Compare sections 1203 and 1204.~~  
41 ~~People v. Peterson (1973) 9 Cal.3d 717, 727, expressly approved the holding of United States v.~~  
42 ~~Weston (9th Cir. 1971) 448 F.2d 626 that due process is offended by sentencing on the basis of~~  
43 ~~unsubstantiated allegations that were denied by the defendant. Cf., In re Hancock (1977) 67~~  
44 ~~Cal.App.3d 943, 949.~~  
45

46 The requirement that the statement include notice of intention to rely on new evidence will  
47 enhance fairness to both sides by avoiding surprise and helping to ensure that the time limit on  
48 pronouncing sentence is met.  
49

1 **Rule 4.447. ~~Limitations on enhancements~~ Sentencing of enhancements**

2  
3 ~~No finding of an enhancement may be stricken or dismissed because imposition of the~~  
4 ~~term either is prohibited by law or exceeds limitations on the imposition of multiple~~  
5 ~~enhancements. The sentencing judge must impose sentence for the aggregate term of~~  
6 ~~imprisonment computed without reference to those prohibitions and limitations, and must~~  
7 ~~thereupon stay execution of so much of the term as is prohibited or exceeds the~~  
8 ~~applicable limit. The stay will become permanent on the defendant's service of the~~  
9 ~~portion of the sentence not stayed.~~

10  
11 **(a) Enhancements resulting in unlawful sentences**

12  
13 A court may not strike or dismiss an enhancement solely because imposition of the  
14 term is prohibited by law or exceeds limitations on the imposition of multiple  
15 enhancements. Instead, the court must:

16  
17 (1) Impose a sentence for the aggregate term of imprisonment computed without  
18 reference to those prohibitions or limitations; and

19  
20 (2) Stay execution of the part of the term that is prohibited or exceeds the  
21 applicable limitation. The stay will become permanent once the defendant  
22 finishes serving the part of the sentence that has not been stayed.

23  
24 **(b) Multiple enhancements**

25  
26 If a defendant is convicted of multiple enhancements of the same type, the court  
27 must either sentence each enhancement or, if authorized, strike the enhancement or  
28 its punishment. While the court may strike an enhancement, the court may not stay  
29 an enhancement except as provided in subdivision (a) or as authorized by section  
30 654.

31  
32 **Advisory Committee Comment**

33  
34 **Subdivision (a).** Statutory restrictions may prohibit or limit the imposition of an enhancement in  
35 certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and  
36 (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

37  
38 Present practice of staying execution is followed to avoid violating a statutory prohibition or  
39 exceeding a statutory limitation, while preserving the possibility of imposition of the stayed  
40 portion should a reversal on appeal reduce the unstayed portion of the sentence. (See *People v.*  
41 *Gonzalez* (2008) 43 Cal.4th 1118, 1129–1130; *People v. Niles* (1964) 227 Cal.App.2d 749, 756.)

42  
43 Only the portion of a sentence or component thereof that exceeds a limitation is prohibited, and  
44 this rule provides a procedure for that situation. This rule applies to both determinate and  
45 indeterminate terms.

46  
47 **Subdivision (b).** A court may stay an enhancement if section 654 applies. (See *People v. Bradley*  
48 (1998) 64 Cal.App.4th 386; *People v. Haykel* (2002) 96 Cal.App.4th 146, 152.)

1  
2 **Rule 4.451. Sentence consecutive to or concurrently with indeterminate term or to**  
3 **term in other jurisdiction**  
4

5 (a) When a defendant is sentenced under section 1170 and the sentence is to run  
6 consecutively to or concurrently with a sentence imposed under section 1168(b) in  
7 the same or another proceeding, the judgment must specify the determinate term  
8 imposed under section 1170 computed without reference to the indeterminate  
9 sentence, must order that the determinate term be served consecutively to or  
10 concurrently with the sentence under section 1168(b), and must identify the  
11 proceedings in which the indeterminate sentence was imposed. The term under  
12 section 1168(b), and the date of its completion or ~~parole~~ date of parole or  
13 postrelease community supervision, and the sequence in which the sentences are  
14 deemed or served, will be determined by correctional authorities as provided by  
15 law.

16  
17 (b) When a defendant is sentenced under sections 1168 or 1170 and the sentence is to  
18 run consecutively to or concurrently with a sentence imposed by a court of the  
19 United States or of another state or territory, the judgment must specify the  
20 ~~determinate~~ term imposed under sections 1168(b) or 1170 computed without  
21 reference to the sentence imposed by the other jurisdiction, ~~must order that the~~  
22 ~~determinate term be served commencing on the completion of the sentence~~  
23 ~~imposed by the other jurisdiction~~, and must identify the other jurisdiction and the  
24 proceedings in which the other sentence was imposed, and must indicate whether  
25 the sentences are imposed concurrently or consecutively. If the term imposed is to  
26 be served consecutively to the term imposed by the other jurisdiction, the court  
27 must order that the California term be served commencing on the completion of the  
28 sentence imposed by the other jurisdiction.  
29

30 **Advisory Committee Comment**  
31

32 The provisions of section 1170.1(a), which use a one-third formula to calculate subordinate  
33 consecutive terms, can logically be applied only when all the sentences are imposed under section  
34 1170. Indeterminate sentences are imposed under section 1168(b). Since the duration of the  
35 indeterminate term cannot be known to the court, subdivision (a) states the only feasible mode of  
36 sentencing. (See *People v. Felix* (2000) 22 Cal.4th 651, 654-657; *People v. McGahuey* (1981)  
37 121 Cal.App.3d 524, 530-532.)  
38

39 On the authority to sentence consecutively to the sentence of another jurisdiction and the effect of  
40 such a sentence, see *In re Helpman* (1968) 267 Cal.App.2d 307 and cases cited at ~~note 3, id. at~~  
41 page 310, footnote 3. The mode of sentencing required by subdivision (b) is necessary to avoid  
42 the illogical conclusion that the total of the consecutive sentences will depend on whether the  
43 other jurisdiction or California is the first to pronounce judgment.  
44

45 **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**  
46

47 If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more  
48 determinate sentences imposed previously in the same court or in other courts, the court

1 in the current case must pronounce a single aggregate term, as defined in section  
2 1170.1(a), stating the result of combining the previous and current sentences. In those  
3 situations:

4  
5 (1) \* \* \*

6  
7 (2) The judge in the current case must make a new determination of which count, in  
8 the combined cases, represents the principal term, as defined in section 1170.1(a).  
9 The principal term is the term with the greatest punishment imposed including  
10 conduct enhancements. If two terms of imprisonment have the same punishment,  
11 either term may be selected as the principal term.

12  
13 (3) Discretionary decisions of the judges in the previous cases may not be changed by  
14 the judge in the current case. Such decisions include the decision to impose one of  
15 the three authorized terms of imprisonment referred to in section 1170(b), making  
16 counts in prior cases concurrent with or consecutive to each other, or the decision  
17 that circumstances in mitigation or in the furtherance of justice justified striking the  
18 punishment for an enhancement. However, if a previously designated principal  
19 term becomes a subordinate term after the resentencing, the subordinate term will  
20 be limited to one-third the middle base term as provided in section 1170.1(a).

21  
22 **Advisory Committee Comment \* \* \***

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2016

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

Criminal Procedure: Court-Appointed Expert's Report in Mental Competency Proceedings  
Amend Cal. Rules of Court, rule 4.130.

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee (CLAC)

*Staff contact (name, phone and e-mail):*

Tara Lundstrom, 415-865-7995, tara.lundstrom@jud.ca.gov

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

Approved by RUPRO: 12/15/2016

Project description from annual agenda:

Mental Health Issues: Collaborate with other advisory committees to consider and implement recommendations originally developed by the Mental Health Implementation Task Force to improve the resolution of mental health issues during criminal proceedings. Specific proposals to consider developing include:

- Proposals related to incompetence to stand trial procedure generally including amendments to rule 4.130 to identify what information must be included, in addition to the information required by Penal Code section 1369, in court-appointed expert reports.

*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

**SPR-17**

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Title	Action Requested
Criminal Procedure: Court-Appointed Expert's Report in Mental Competency Proceedings	Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.130	January 1, 2018
Proposed by	Contact
Hon. Tricia A. Bigelow, Chair Criminal Law Advisory Committee	Tara Lundstrom, Attorney 415-865-7995 tara.lundstrom@jud.ca.gov

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### **Executive Summary and Origin**

The Criminal Law Advisory Committee proposes amending the California Rule of Court relating to mental competency proceedings in criminal cases to implement recommendations from the Judicial Council's mental health task forces. This proposal would amend this rule to identify the information that must be included in a court-appointed expert's report on a criminal defendant's competency to stand trial.

### **Background**

The Task Force for Criminal Justice Collaboration on Mental Health Issues issued a final report in April 2011. Among the task force's recommendations was the suggestion that rule 4.130—which addresses mental competency proceedings under Penal Code section 1367 et seq.—be revised. Specifically, the task force recommended revising rule 4.130(d)(2) to identify what information must be included in the court-appointed expert's report.

The Mental Health Issues Implementation Task Force—the task force convened to review the 2011 recommendations and develop a plan for their implementation—issued a final report in December 2015. This final report also included the recommendation to amend rule 4.130(d)(2).

### **The Proposal**

Rule 4.130(d)(2) provides that a court-appointed expert must examine the defendant and advise the court on the defendant's competency to stand trial. It requires submission of the report to the court, counsel for the defendant, and the prosecution.

*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.*

This proposal would amend rule 4.130(d)(2) to further require that the report include the following information to assist courts in making competency determinations:

1. A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial, and preparing a resulting report;
2. A summary of the examination conducted by the examiner on the defendant, including a current diagnosis, if any, of the defendant's mental disorder and a summary of the defendant's mental status;
3. A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder;
4. A summary of an assessment conducted for malingering, or feigning symptoms, which may include, but need not be limited to, psychological testing;
5. Under Penal Code section 1369, a statement on whether treatment with antipsychotic medication is medically appropriate for the defendant, whether the treatment is likely to restore the defendant to mental competence, a list of likely or potential side effects of the medication, the expected efficacy of the medication, possible alternative treatments, whether it is medically appropriate to administer antipsychotic medication in the county jail, and whether the defendant has the capacity to make decisions regarding antipsychotic medication;
6. A list of all sources of information considered by the examiner, including legal, medical, school, military, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; and any other collateral sources considered in reaching his or her conclusion;
7. A statement on whether the examiner reviewed the police reports, criminal history, statement of the defendant, and statements of any witnesses to the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency;
8. A statement on whether the examiner reviewed the booking information, including the information from any booking, mental health screening, and mental health records following the alleged crime, as well as a summary of any information from those sources relevant to the examiner's opinion of competency; and

9. A summary of the examiner’s consultation with the prosecutor and defendant’s attorney, and of their impressions of the defendant’s competence-related strengths and weaknesses.

### **Alternatives Considered**

The committee initially considered whether to recommend omitting the requirement that the report include “[a] summary of the examiner’s consultation with the prosecutor and defendant’s attorney, and of their impressions of the defendant’s competence-related strengths and weaknesses” out of concern for preserving attorney-client confidentiality. Ultimately, it decided to recommend inclusion of this requirement to ensure that the court reviewing the evaluation knows the source of the court-appointed expert’s opinion. The committee reasoned that if an attorney decides to communicate information about a client’s functioning to a court-appointed expert, those communications are not privileged.

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

To the extent that the requirements specified in this proposal exceed those currently provided in Penal Code section 1369, this proposal may require a court-appointed expert to conduct further evaluation of a defendant and provide greater detail in the expert report. This proposal may result in greater costs to the courts depending on how they pay for court-appointed experts.

## **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 three and a half 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 Cal. Rules of Court, rule 4.130, at pages 4–5
2. *Task Force for Criminal Justice Collaboration on Mental Health Issues: Final Report* (April 2011), [http://www.courts.ca.gov/documents/Mental\\_Health\\_Task\\_Force\\_Report\\_042011.pdf](http://www.courts.ca.gov/documents/Mental_Health_Task_Force_Report_042011.pdf)
3. *Mental Health Issues Implementation Task Force: Final Report* (December 2015), <http://www.courts.ca.gov/documents/MHIITF-Final-Report.pdf>

Rule 4.130 of the California Rules of Court would be amended, effective January 1, 2018, to read:

1 **Rule 4.130. Mental competency proceedings**

2  
3 **(a)–(c) \* \* \***

4  
5 **(d) Examination of defendant after initiation of mental competency proceedings**

6  
7 (1) \* \* \*

8  
9 (2) Any court-appointed experts must examine the defendant and advise the  
10 court on the defendant’s competency to stand trial. Experts’ reports are to be  
11 submitted to the court, counsel for the defendant, and the prosecution. The  
12 report must include the following:

13  
14 (A) A brief statement of the examiner’s training and previous experience as  
15 it relates to examining the competence of a criminal defendant to stand  
16 trial, and preparing a resulting report;

17  
18 (B) A summary of the examination conducted by the examiner on the  
19 defendant, including a current diagnosis, if any, of the defendant’s  
20 mental disorder and a summary of the defendant’s mental status;

21  
22 (C) A detailed analysis of the competence of the defendant to stand trial  
23 using California’s current legal standard, including the defendant’s  
24 ability or inability to understand the nature of the criminal proceedings  
25 or assist counsel in the conduct of a defense in a rational manner as a  
26 result of a mental disorder;

27  
28 (D) A summary of an assessment conducted for malingering, or feigning  
29 symptoms, which may include, but need not be limited to,  
30 psychological testing;

31  
32 (E) Under Penal Code section 1369, a statement on whether treatment with  
33 antipsychotic medication is medically appropriate for the defendant,  
34 whether the treatment is likely to restore the defendant to mental  
35 competence, a list of likely or potential side effects of the medication,  
36 the expected efficacy of the medication, possible alternative treatments,  
37 whether it is medically appropriate to administer antipsychotic  
38 medication in the county jail, and whether the defendant has the  
39 capacity to make decisions regarding antipsychotic medication;

40  
41 (F) A list of all sources of information considered by the examiner,  
42 including legal, medical, school, military, employment, hospital, and



## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** 2/28/17

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

Criminal Procedure: Motion and Order to Vacate Conviction or Sentence

*Committee or other entity submitting the proposal:*

Criminal Law Advisory Committee

Hon. Tricia Ann Bigelow, Chair

*Staff contact (name, phone and e-mail):* Eve Hershcopf, Attorney

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: Dec. 15, 2016

Project description from annual agenda: #9 Review all approved initiatives and enacted legislation referred to the committee by the Judicial Council's Governmental Affairs office that may have an impact on criminal court administration and propose, for the council's consideration, rules and forms as may be appropriate for implementation of these initiatives and legislation.

*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.)

N/A

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR17-

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<b>Title</b> Criminal Procedure: Motion and Order to Vacate Conviction or Sentence	<b>Action Requested</b> Review and submit comments by April 28, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b> Approve forms MC-245 and MC-246	<b>Proposed Effective Date</b> January 1, 2018
<b>Proposed by</b> Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	<b>Contact</b> Eve Hershkopf, Attorney 415-865-7961 <a href="mailto:eve.hershkopf@jud.ca.gov">eve.hershkopf@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes new optional forms to assist self-represented individuals and the courts in implementing the recent legislation that permit criminally convicted individuals no longer in custody to file a motion to vacate a conviction or sentence and withdraw the plea of guilty or nolo contendere based on prejudicial errors related to immigration consequences or newly discovered evidence of actual innocence as well as an existing statute provides similar relief for a comparable judicial error related to immigration consequences.

### Background

New Penal Code section 1473.7 was adopted effective January 1, 2017 (Assem. Bill 813, Stats. 2016, Ch. 739, Sec. 1.)<sup>1</sup> This new section permits individuals convicted of criminal offenses and no longer in custody to file a motion to vacate a conviction or sentence based on either of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence. Section 1473.7(b)–(f) provides specific procedures for the motion and hearing process.

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<sup>1</sup> All future references are to the Penal 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.*

In preparing this invitation to comment, the committee recognized that section 1016.5, originally enacted in 1977,<sup>2</sup> provides similar relief for a comparable judicial error related to immigration consequences. This section permits individuals to file a motion to vacate a conviction and withdraw the plea of guilty or nolo contendere based on the court's failure to advise the defendant of the potential immigration consequences of a conviction and the defendant's showing that the conviction may have immigration consequences. The committee concluded that including this related basis for relief from a conviction in the proposed forms would be efficient.

## The Proposal

Proposed *Motion to Vacate Conviction or Sentence* (form MC-245) and *Order on Motion to Vacate Conviction or Sentence* (form MC-246) would assist self-represented individuals and the courts in following the procedural requirements established by sections 1016.5 and 1473.7, as follows:

- Proposed form MC-245 provides for a motion to vacate a conviction under either section 1016.5 or section 1473.7. The form identifies the statutory bases for these motions and includes space for the moving party to provide facts regarding each of the required elements for the requested relief:
  - A motion under section 1016.5 must be based on a claim that the court failed to admonish the defendant on the record, before acceptance of a plea of guilty or nolo contendere; that conviction of the offense may have various immigration consequences for the defendant; and that the defendant was prejudiced by the court's failure to admonish the defendant regarding the immigration consequences or to provide a complete advisement.<sup>3</sup> Prejudice is shown if the defendant establishes that it was reasonably probable that he or she would not have pleaded guilty or nolo contendere if properly advised.<sup>4</sup>
  - A motion under section 1473.7, available to a person no longer in custody, must be based on either of two claims: (1) a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere; or (2) newly discovered evidence of actual innocence.
- Proposed form MC-246 is designed to assist courts in making the requisite findings to order or deny appropriate relief.
- Sections 1016.5(b) and 1473.7(b)–(f) establish specific procedures for the motion and hearing process, as follows:
  - Section 1473.7(d) provides in part that, on request, the court may hold the hearing without the personal presence of the moving party if counsel is present and the court finds good cause as to why the moving party cannot be present.

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<sup>2</sup> Sen. Bill 276; Stats. 1977, ch. 1088.

<sup>3</sup> *People v. Superior Court (Zamudio)* (2000), 23 Cal.4th 183, 200.

<sup>4</sup> *People v. Martinez* (2013), 57 Cal.4th 555, 559; *People v. Arriaga* (2014) 58 Cal.4th 950, 957–58.

- Section 1473.7(e) provides in part that, in granting or denying the motion, the court shall specify the basis for its conclusion.
- Sections 1016.5(b) and 1473.7(e) provide in part that if the court grants the motion, the court shall allow the moving party to withdraw the plea.

Proposed forms MC-245 and MC-246 include provisions designed to guide the moving party and the court in implementing these procedures.

### **Alternatives Considered**

The committee considered postponing or declining to propose new forms to implement the provisions of section 1473.7. The committee also considered proposing new forms that solely address section 1473.7 relief. The committee decided, however, to recommend two new optional forms that address both section 1016.5 and section 1473.7 because of the Legislature’s emphasis on providing relief for eligible defendants,<sup>5</sup> and in the interest of reducing confusion for self-represented petitioners and assisting courts to meet statutory requirements.

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

Because the forms are optional, 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.

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<sup>5</sup> Subdivision (d) of section 1016.5 states:

The Legislature finds and declares that in many instances involving an individual who is not a citizen of the United States charged with an offense punishable as a crime under state law, a plea of guilty or nolo contendere is entered without the defendant knowing that a conviction of such offense is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States. Therefore, it is the intent of the Legislature in enacting this section to promote fairness to such accused individuals by requiring in such cases that acceptance of a guilty plea or plea of nolo contendere be preceded by an appropriate warning of the special consequences for such a defendant which may result from the plea....

(Pen. Code, § 1016.5(d).)

Similarly, the author of Assembly Bill 813 noted the following:

California lags far behind the rest of the country in its failure to provide its residents with a means of challenging unlawful convictions after their criminal sentences have been served. Forty-four states and the federal government all provide individuals with a way of challenging unjust convictions after criminal custody has ended. In California, however, individuals who gain access to evidence of actual innocence—or to proof of a defect in the underlying criminal proceeding—have no way to present this evidence before the court after criminal custody has expired. [¶] This omission has a particularly devastating impact on California’s immigrant community. Since 1987, California law has required defense counsel to inform non-citizen defendants about the immigration consequences of convictions. However, many defense attorneys still fail to do so. Many immigrants suffer convictions without having any idea that their criminal record will, at some point in the future, result in mandatory immigration imprisonment and deportation, permanently separating families.

(Sen. Public Safety Com., analysis of Assem. Bill No. 813 (2015–2016 Reg. Sess) p. 4, [http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160AB813](http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB813).)

## 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 forms easy to understand and follow for a self-represented litigant? If not, please identify specific recommendations for improving their readability, format, and design.

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 three and a half 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

1. Proposed forms MC-245 and MC-246, at pages 5–8

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>MOTION TO VACATE CONVICTION OR SENTENCE</b> <b>(Pen. Code, §§ 1016.5, 1473.7)</b>	<b>FOR COURT USE ONLY</b> DATE: TIME: DEPARTMENT:

**Instructions — Read Carefully**

If you are requesting that the court vacate a sentence or criminal conviction, you should file this motion in the superior court in the county where the conviction or sentence was imposed.

- Read the entire form *before* answering any questions.
- This motion must be clearly handwritten in ink or typed. Make sure all answers are true and correct. Because the motion is made under penalty of perjury, if you make a statement that you know is false it could result in a conviction for perjury.
- Fill in the requested information. If you need additional space, add an extra page and note that your answer is "continued on additional page." You may use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.
- Only the original motion needs to be filed unless local rules require additional copies.
- Notify the clerk of the court in writing if you change your address after filling your motion.

This motion concerns a conviction or sentence. (Note: You must file a separate motion for each conviction or sentence.)

1. On (date): \_\_\_\_\_, I was convicted of a violation of the following offenses (List all offenses included in the conviction.):

Code	Section	Type of offense (felony, misdemeanor, or infraction):

If additional space is needed for listing offenses, use *Attachment to Judicial Council Form* (form MC-025) or any other additional page.

2.  **Motion under Penal Code Section 1016.5**

**GROUNDS FOR RELIEF: I am requesting relief based on the following:**

- a. Before my acceptance of a plea of guilty or nolo contendere to the offense, the court failed to advise me, as required under Penal Code Section 1016.5(a), that the conviction might have immigration consequences.
- b. The conviction that was based on my plea of guilty or nolo contendere may result in immigration consequences for me, including possible deportation, exclusion from admission to the United States, or denial of naturalization.
- c. I likely would not have pleaded guilty or nolo contendere if the court had advised me of the immigration consequences of my plea. (*People v. Arriaga* (2014) 58 Cal.4th 950.)

- Supporting facts:

*Tell your story briefly. Describe the facts you allege regarding (1) the court's failure to advise you of the immigration consequences (2) the possible immigration consequences and (3) the likelihood that you would not have pleaded guilty or nolo contendere if you had been advised of the immigration consequences by the court. If necessary, attach additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.):*

3.  **Motion under Penal Code Section 1473.7**

I am not currently imprisoned or restrained.

**GROUNDS FOR RELIEF: I am requesting relief based on the following:**

- a.  The conviction or sentence is legally invalid due to a prejudicial error damaging my ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere.

- Supporting facts:

*Tell your story briefly. Describe the facts you allege to be prejudicial error. 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 specifying what your attorney did or failed to do and how that affected your plea. (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.):*

- b.  Newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.

I discovered the new evidence of actual innocence on: *(date)*

- Supporting facts:

Tell your story briefly. Describe the facts you allege to constitute newly discovered evidence of actual innocence. *If necessary, attach additional pages. If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.*

4.  I request that the court hold the hearing on this motion without my personal presence for the following reasons:

DRAFT

5. I request that the court vacate the conviction or sentence in the above-captioned matter.

6. I request that the court allow the withdrawal of the plea of guilty or nolo contendere in the above-captioned matter.

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 DECLARANT)



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

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>ORDER ON MOTION TO VACATE CONVICTION OR SENTENCE</b> <b>(Pen. Code, §§ 1016.5, 1473.7 )</b>	<b>FOR COURT USE ONLY</b> DATE: _____ TIME: _____ DEPARTMENT: _____

1. For purposes of Penal Code Section 1016.5 relief, the court:

grants  denies the moving party's request to vacate the judgment and withdraw the plea of guilty or nolo contendere.

2. For purposes of Penal Code Section 1473.7 relief:

a. The court  finds good cause  does not find good cause as to why the moving party cannot be personally present for the hearing and

grants  
 denies

the request that the court hold the hearing without the personal presence of the moving party.

b. The moving party  has established  has not established the existence of grounds for relief, as specified below:

c. The court  grants  denies the moving party's request to vacate the conviction or sentence on the basis that the conviction or sentence is legally invalid due to a prejudicial error.

d. The court  grants  denies the moving party's request to vacate the conviction or sentence based on newly discovered evidence of actual innocence.

e. The court  grants  denies the moving party's request to withdraw the plea of guilty or nolo contendere.

(date): \_\_\_\_\_  
\_\_\_\_\_  
(JUDICIAL OFFICER)

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** 2/24/17

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

Criminal Procedure: Felony Waiver and Plea Form

*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: 12/15/16

Project description from annual agenda: Revise Plea Form, With Explanations and Waiver of Rights – Felony (Criminal), CR-101: including to clarify advisement to defendants of the consequences of violations of terms of mandatory supervision; and clarify circumstances of the court accepting pleas and court authority to withdraw approval. (See People v. Silva (2016) 247 Cal. App. 4th 578.)

*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

SPR17-\_\_

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Felony Waiver and Plea Form	Review and submit comments by April 28, 2017
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise form CR-101	January 1, 2018
<b>Proposed by</b>	<b>Contact</b>
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 Judicial Council *Plea Form, with Explanations and Waiver of Rights—Felony* (form [CR-101](#)). The proposed revisions (1) respond to recent case law that confirmed the scope of the advisement regarding the court’s approval of the plea agreement and underscored the importance of accurately conveying the advisement on form CR-101, and (2) add an advisement regarding the effect of a violation of the terms and conditions of mandatory supervision.

### Background

The *Plea Form, With Explanation and Waiver of Rights—Felony* (form CR-101) is an optional form adopted by the Judicial Council effective January 1, 2007. The form was substantially revised in 2012 in response to criminal justice realignment legislation. The form is designed to include waivers, the direct consequences of a plea, and the most common advisements and warnings.

Recent case law<sup>1</sup> confirms the scope of the advisement regarding the court’s approval of the plea agreement and the circumstances under which the court may withdraw its approval of a negotiated disposition, and underscores the importance of accuracy in the advisements included on form CR-101. Specifically, the court held that paragraph 6.e. on current plea form CR-101 does not adequately convey the admonishments of Penal Code section [1192.5](#). The court found that, “[t]he form does not inform defendants that the court’s approval of the

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<sup>1</sup> [People v. Silva](#) (2016) 247 Cal.App.4th 578, 588.

*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.*

negotiated disposition is not binding and that the court could withdraw its approval simply upon ‘further consideration’ as stated in section 1192.5.” The court noted that the “discovery of new facts”—the title of current paragraph 6.e.—is one circumstance under which a trial court could reject a negotiated agreement, but that section [1192.5](#) is not limited to that one circumstance.

Criminal justice realignment legislation enacted changes to felony sentencing laws, including authorizing courts to impose a period of mandatory supervision under Penal Code section 1170(h)(5)(B), and addressing proceedings to modify or revoke mandatory supervision.<sup>2</sup> The item on form CR-101 that addresses split sentencing does not currently include an advisement on the effect of a violation of the terms and conditions of mandatory supervision.

### **The Proposal**

The Criminal Law Advisory Committee proposes revising the following items in the *Plea Form, With Explanation and Waiver of Rights—Felony* (form CR-101) as follows:

- Revise item 2.c. to include an advisement that if the defendant violates any of the terms or conditions of mandatory supervision, he or she may be remanded into custody for a period up to the total of the unserved portion of the sentence.
- Revise item 6.e. by changing the title of the item to “Court Approval of Plea Agreement.” Retain the first sentence of the item that confirms the defendant understands the plea agreement is based on the facts before the court. Substitute for the remainder of the item a statement confirming that the approval of the court is not binding, the court may withdraw its approval of the plea agreement upon further consideration of the matter, and if the court withdraws its approval the defendant understands that he or she will be allowed to withdraw the plea. Add a citation to Penal Code section 1192.5.

The proposed revised form is attached at pages 4–10.

### **Alternatives Considered**

The committee considered not proposing any changes to form CR-101. The committee, however, determined that these revisions are appropriate because they are responsive to recent case law and modifications of felony sentencing laws under criminal justice realignment.

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

As optional forms, 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.

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<sup>2</sup> Assem. Bill 109 (Committee on Budget; Stats. 2011, ch. 15); Assem. Bill 117 (Committee on Budget; Stats. 2011, ch. 39); ABX1 17 (Blumenfeld; Stats. 2011, ch. 12); Sen. Bill 1023 (Committee on Budget; Stats. 2012, ch. 43).

## 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 recent case law regarding court approval of plea agreements, and advise defendants regarding possible consequences for mandatory supervision violations?

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 form CR-101, at pages 4–10
2. Link A: [People v. Silva](#) (2016) 247 Cal.App.4th 578

<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b></p> <p>STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:</p>	<p><i>FOR COURT USE ONLY</i></p> <p style="font-size: 24px; font-weight: bold; color: red;">DRAFT</p> <p style="font-size: 24px; font-weight: bold; color: red;">Not Approved by the Judicial Council</p>
<p><b>PEOPLE OF THE STATE OF CALIFORNIA</b></p> <p style="text-align: center;">v.</p> <p>Defendant(s):</p>	
<p><b>PLEA FORM, WITH EXPLANATIONS AND WAIVER OF RIGHTS—FELONY</b></p>	<p>CASE NUMBER:</p>

- INSTRUCTIONS:**
- (1) Fill out this form only if you want to plead guilty or no contest.
  - (2) Read this form carefully. For each item, if you understand and agree with what you read, put your initials in the box to the right of the item. For any item that does not apply to you or that you do not understand, leave the box blank.
  - (3) On page 6, sign and date the form under "DEFENDANT'S STATEMENT."
  - (4) Keep in mind that the court cannot give legal advice. If you have any questions about anything in this form, ask your attorney.

1. **CHARGES AND MAXIMUM TERM.** I want to plead guilty or no contest ("nolo contendere") to the charges and allegations listed below. I understand that the minimum and maximum penalties for the charges to which I am pleading guilty or no contest are listed below.

COUNT	CHARGES (SECTION & DESCRIPTION)	YEARS / MONTHS		PRIOR CONVICTIONS, ENHANCEMENTS, & SPECIAL ALLEGATIONS (SECTION & DESCRIPTION)	YEARS / MONTHS		TOTAL MAXIMUM TIME
		MINIMUM	MAXIMUM		MINIMUM	MAXIMUM	
<b>AGGREGATE MAXIMUM TIME OF IMPRISONMENT</b>							

2. **PLEA AGREEMENT.** I understand that I must tell the court on this form about any promises anyone has made to me about the sentence I will receive or the sentence recommendations that will be made to the court. My attorney, the court, or the prosecutor has explained to me that if I plead guilty or no contest to the charges and admit the allegations listed above, the court will sentence me as follows:

- a. Check one:  **State Prison** (or the Division of Juvenile Justice)     **County Jail** for
- (1)  years and  months or
- (2)  Not less than  years and  months and/or not more than  years and  months.
- (3)  Other (*specify*):
- b. **Probation** for  years under conditions to be set by the court, including:
- days in the **county jail** or
- up to  days in the **county jail**.

INITIALS



I understand that a violation of any of the conditions of probation, including failure to complete a drug education or treatment program, if ordered by the court, may cause the court to send me to **county jail or state prison** for up to the "**Aggregate Maximum Time of Imprisonment**" specified in item 1, which may include a period of mandatory supervision under Penal Code section 1170(h)(5)(B) if the court sends me to county jail.

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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INITIALS

c. **Split Sentence (1170(h)(5)(B)):**      years and      days in the county jail and      years and      days on

mandatory supervision under conditions set by the court. I understand that if I violate any of the terms or conditions of mandatory supervision, I may be remanded into custody for the entire unserved portion of the sentence.

2. d. **Narcotics Addiction Confinement**

I understand that if the court finds that I am addicted to narcotics or in immediate danger of becoming a narcotics addict, the court may send me to a narcotics detention, treatment, and rehabilitation facility for up to the amount of time I would otherwise have served in prison.

e. **Open Plea**

1.  I understand the maximum and minimum sentences for the charges and allegations stated on page 1. No one has made any other promises to me about what sentence the court may order.
2.  I understand that I am not eligible for probation.
3.  I understand that I will not be granted probation unless the court finds at the time of sentencing that this is an unusual case where the interests of justice would be best served by granting probation.

f. **Restitution, Statutory Fees, and Assessments**

I understand that the court will order me to pay the following amounts (if an amount is not yet known, "TBD" for "to be determined" is entered next to the \$); I must prepare financial disclosure statements to assist the court in determining my ability to pay; and refusal or failure to prepare the required financial disclosure statements may be used against me at sentencing:

1.  \$      **to the Victim Restitution Fund**
2.  \$      **restitution to actual victims**
3.  \$      **restitution to the State of California, Victims of Crime Fund**
4.  \$      **court operations assessment**
5.  \$      **court facilities assessment**
6.  \$      **base fine plus any applicable penalties, assessments, and surcharges**
7.  \$ **other (specify):**
8.  \$ **other (specify):**
9.  An (additional) amount to be determined by the court at sentencing or such other hearing as the court may set.

g. **Parole Revocation or Probation Revocation Fine**

I understand that if I am sentenced to **state prison**, the court **will** impose a parole revocation fine, which will be collected only if my parole is later revoked. I also understand that if I am granted probation, the court **will** impose a probation revocation fine, which will be collected only if my probation is later revoked.

h. **Dismissal of Other Counts**

I understand that as part of the plea agreement bargain, the following counts will be dismissed after sentencing:

I understand and agree that the sentencing judge may consider facts underlying dismissed counts to determine restitution and to sentence me on the counts to which I am entering a plea.

i. **Other Terms (specify):**

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3. CONSEQUENCES OF MY PLEA

INITIALS

a. No Contest ("Nolo Contendere") Plea

I understand that a no contest plea is the same as pleading guilty and that if I plead no contest, I will be convicted and my no contest plea could be used against me in a civil case.

b. Parole and Postrelease Community Supervision

I understand that if I am sentenced to state prison or a narcotics treatment facility

(1) I will be placed on parole or postrelease community supervision for up to \_\_\_\_\_ years after my release.

(2) If I abscond or the court tolls my supervision, the total time of parole or postrelease community supervision can be extended.

(3) If I violate any of the terms or conditions of my parole, I can be sentenced to county jail for up to 180 days for each violation, or returned to state prison for up to one year, up to a maximum of \_\_\_\_\_ years. If I violate any of the terms or conditions of postrelease community supervision, I can be sentenced to county jail for up to 180 days for each violation, for up to a maximum of 3 years.

c. Effect of Conviction on Other Cases

I understand that a conviction in this case may constitute a violation of any other current grant of parole, mandatory supervision, postrelease community supervision, or probation in any other case and that I may receive additional punishment as a result of that violation.

d. Registration

I understand that I will be required to register with the local police agency or sheriff's department in the city or county in which I reside as

- (1)  an arson offender
- (2)  a gang member
- (3)  a narcotics offender
- (4)  a sex offender (this registration is a lifelong requirement)
- (5)  other (specify):

and that if I fail to register or to keep my registration current for any reason, new felony criminal charges may be filed against me.

e. Prints and DNA Samples

I understand that I must provide biological samples and prints for identification purposes—including buccal (mouth) swab samples, right thumb prints, palm prints of each hand, and blood specimens or other biological samples required by law—and that failure to do so constitutes a new criminal offense.

f. Serious or Violent Felony

(1)  I understand that by pleading guilty or no contest to a serious or violent felony ("strike"), the penalty for any future felony conviction will be increased as a result of my conviction in this case, depending on the number of strikes I have, up to a mandatory prison sentence of double the term otherwise provided or a term of at least 25 years to life.

(2)  I understand that if I am convicted of a violent felony, jail or prison conduct/work-time credit I may accrue will exceed 15%.

(3)  I understand that if I am admitting a prior strike conviction, prison work-time credit that I may accrue will not exceed 20% of the total term of imprisonment.

(4)  I understand that if I am convicted of murder or a third felony conviction of certain offenses, I am ineligible to receive work-time credits. Count \_\_\_\_\_ is such an offense.

g. Prior Prison Term or County Jail Sentence Under Penal Code Section 1170(h)(5)

I understand that if I am sentenced to prison or county jail under Penal Code section 1170(h)(5), the penalty for any future felony conviction may be increased as a result of my incarceration in this case.

h. Driver's License and Vehicle Forfeiture

I understand that my privilege to drive a motor vehicle may be revoked or suspended by the court or the California Department of Motor Vehicles, and my vehicle may be ordered forfeited if it was involved in the offense.

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3. i. **Immigration Consequences** INITIALS  
 I understand that if I am not a citizen of the United States, my plea of guilty or no contest may or, with certain offenses, **will** result in my deportation, exclusion from reentry to the United States, and denial of naturalization and amnesty, and that the appropriate consulate may be informed of my conviction. The offenses that **will** result in such immigration action include, but are not limited to, an aggravated felony, conspiracy, a controlled substance offense, a firearm offense, and, under certain circumstances, a moral turpitude offense.
- j. **Firearms**  
 I understand that federal and state laws prohibit a convicted felon from possessing firearms or ammunition for life.
- k. **Other Consequences** (*specify*):

4. **RIGHT TO AN ATTORNEY**  
 I understand that I have the right to an attorney of my choice to represent me throughout the proceedings. If I cannot afford to hire an attorney, the court will appoint one to represent me.

**I hereby give up my right to be represented by an attorney.**

5. **OTHER CONSTITUTIONAL RIGHTS**  
 I understand that I am entitled to each of the following rights as to the charges listed in item 1 (on page 1):
- a. **Right to a Jury Trial**  
 I understand that I have a right to a speedy and public jury trial. At the trial, I would be presumed to be innocent, and I could not be convicted unless, after hearing all of the evidence, 12 impartial jurors chosen from the community were convinced beyond a reasonable doubt that I am guilty.
- b. **Right to a Court Trial**  
 I understand that, as an alternative to a jury trial, if the prosecutor agrees, I may give up a jury trial and have a court trial in which the judge alone, without a jury, hears the evidence. I still could not be convicted unless, after hearing all of the evidence, the judge was convinced beyond a reasonable doubt that I am guilty.
- c. **Right to Confront and Cross-Examine Witnesses**  
 I understand that I have the right to confront and cross-examine all witnesses testifying against me. This means that the prosecution must produce the witnesses in court, they must testify under oath in my presence, and my attorney may question them.
- d. **Right to Remain Silent and Not to Incriminate Myself**  
 I understand that I have the right to remain silent, and my silence cannot be considered as evidence against me. I understand that I also have the right not to incriminate myself, and I cannot be forced to testify.
- e. **Right to Produce Evidence and to Present a Defense**  
 I understand that I have a right to present evidence and to have the court issue subpoenas to bring to court all witnesses and evidence favorable to me, at no cost to me. I also have the right to testify on my own behalf.

6. **BEFORE THE PLEA**
- a. **Discussion With My Attorney**  
**Before entering this plea, I have had a full opportunity to discuss the following with my attorney:**
- (1) The facts of my case;
  - (2) The elements of the charged offenses, prior convictions, enhancements, and special allegations;
  - (3) Any defenses that I may have;
  - (4) My constitutional and statutory rights and waiver of those rights;
  - (5) The consequences of this plea, including the immigration consequences; and
  - (6) Anything else I think is important to my case.

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6. b. **Questions** INITIALS  
 I have no further questions of the court or of my attorney with regard to my plea and admissions in this case, any of the rights, or anything else on this form.

c. **Stipulation to Commissioner**  
 I understand that I have the right to have a judge take my plea and sentence me. I give up this right and agree to have a commissioner, sitting as a temporary judge, take my plea and sentence me.

d. **Medication or Controlled Substances**  
 I am not taking any medication that affects my ability to understand this form and the consequences of my plea, have not recently consumed any alcohol or drugs, and am not suffering from any medical condition, except for the following:

e. **Court Approval of Plea Agreement**  
 I understand that the plea agreement in item 2 (on pages 1 and 2) is based on the facts before the court. I understand that if the court approves this plea agreement the approval of the court is not binding, and that the court may withdraw its approval of the plea agreement upon further consideration of the matter. I understand that if the court withdraws its approval of this plea agreement I will be allowed to withdraw my plea. (Pen. Code, § 1192.5.)

7. **STATUTORY RIGHT TO A PRELIMINARY HEARING**  
 I understand that before I have a trial, the law gives me the right to a speedy preliminary hearing at which the prosecution would produce evidence and the court must find reasonable causes to believe I committed the crimes with which I have been charged. I understand that I have all of the above constitutional rights at the preliminary hearing, except for the right to a jury trial.

**I give up my right to a preliminary hearing and the constitutional rights listed in item 5 (on page 4).**

8. **WAIVER OF CONSTITUTIONAL RIGHTS**  
 I give up, for each of the charges and allegations listed in item 1 (on page 1) my right to a jury trial, my right to a court trial, my right to confront and cross-examine witnesses, my right to remain silent and not to incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf. I understand that I am, in fact, incriminating myself with my plea.

9. **THE PLEA**  
 I freely and voluntarily plead  GUILTY  NO CONTEST to the charges listed in item 1 (on page 1) and admit the allegations listed in item 1 (on page 1), understanding that this plea and admission will lead to the penalties listed in item 2 (on pages 1 and 2).

a. I offer my plea of guilty or no contest freely and voluntarily and with full understanding of everything in this form. No one has made any threats; used any force against me, my family, or my loved ones; or made any promises to me, except as listed in this form, in order to convince me to plead guilty or no contest.

b. **I understand that the court is required to find a factual basis for my plea to make sure that I am entering a plea to the proper offenses under the facts of the case.**

**I offer to the court the following as the basis for my plea of guilty or no contest and any admissions:**

(1) **I understand that the court may consider the following as proof of the factual basis for my plea:**

- (a)  Preliminary hearing transcript
- (b)  Police report
- (c)  Probation report
- (d)  Welfare investigator's declaration
- (e)  Court documents regarding any alleged prior offenses
- (f)  Other (specify):
- (g)  (Specify facts):

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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9. b. (2) **I am pleading guilty or no contest to take advantage of a plea agreement (my attorney will stipulate to a factual basis for the plea).** (*People v. West* (1970) 3 Cal.3d 595.) INITIALS

**10. AFTER THE PLEA**

**a. Surrender**

I understand that the court is allowing me to surrender at a later date to begin serving time in custody. I agree that if I fail to appear on the date set for surrender or sentencing without a legal excuse, my plea will become an "open plea" to the court, I will not be allowed to withdraw my plea, and I may be sentenced up to the maximum allowed by law.

**b. Sentencing Court**

I understand that I have the right to be sentenced by the same judge or commissioner who takes my plea. I give up that right and agree that any judge or commissioner may sentence me.

**c. Sentencing Date**

I understand that I have the right to be sentenced within 20 court days. I give up that right and agree to be sentenced at a later date.

**11. MANDATORY WARNING**

I understand that if I am charged with violating Vehicle Code section 23103, as specified in Vehicle Code section 23103.5, or Vehicle Code sections 23152 or 23153, the following warning applies:

**You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and as a result of that driving someone is killed, you can be charged with murder.**

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**DEFENDANT'S STATEMENT**

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**I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, and effects of any prior convictions, enhancements, and special allegations have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.**

\_\_\_\_\_  
 DEFENDANT'S SIGNATURE

\_\_\_\_\_  
 DATE

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**ATTORNEY'S STATEMENT**

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I am the attorney of record for the defendant. I have reviewed this form with my client. I have explained each of the items in the form, including the defendant's constitutional and statutory rights, to the defendant and have answered all of his or her questions with regard to those rights, the other items in this form, and the plea agreement. I have also discussed the facts of the case with the defendant and have explained the nature and elements of each charge; any possible defenses to the charges; the effect of any prior convictions, enhancements, and special allegations; and the consequences of the plea.

I concur in the plea and admissions and join in the waiver of the defendant's constitutional and statutory rights, and I hereby stipulate that there is a factual basis for the plea and refer the court to the  police report  preliminary hearing transcript  probation report  other (*specify*): \_\_\_\_\_ (*People v. West* (1970) 3 Cal.3d 595.)

\_\_\_\_\_  
 ATTORNEY'S SIGNATURE

\_\_\_\_\_  
 DATE

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> Defendant(s):	CASE NUMBER:
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**INTERPRETER'S STATEMENT**

I have been duly sworn or having a written oath on file, certify that I truly translated this form to the defendant in the language noted below. The defendant stated that he or she understood the contents on the form and then initialed and signed the form.

Language  Spanish  other (*specify*):

_____ INTERPRETER'S SIGNATURE	_____ DATE
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\_\_\_\_\_  
INTERPRETER'S NAME (TYPE OR PRINT)

**DISTRICT ATTORNEY'S STATEMENT**

I have read this form and understand the terms of the plea agreement.

I  agree  do not agree with the terms of the plea agreement and the indicated sentence.

_____ ATTORNEY'S SIGNATURE	_____ DATE
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**COURT'S FINDINGS AND ORDER**

The court, having reviewed this form (and any addenda), and having orally examined the defendant, finds as follows:

1. The defendant has read or has had read to him or her and understands each of the initialed items in this form.
2. The defendant understands the nature of the crimes and allegations listed in item 1 (on page 1) and the consequences of the plea and any admissions.
3. The defendant expressly, knowingly, understandingly, and intelligently waives his or her constitutional and statutory rights.
4. The defendant's plea, admissions, and waiver of rights are made freely and voluntarily.
5. A factual basis exists for the plea and admissions, or the defendant is pleading pursuant to a plea bargain under *People v. West*.

The court accepts the defendant's plea, admissions, and waiver of rights, and the defendant is hereby convicted based thereon.

It is ordered that this document be filed with the court's records of this case and that the defendant's plea, admissions, and waiver of rights be accepted and entered in the minutes of this court.

_____ JUDGE'S SIGNATURE	_____ DATE
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## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** Thursday, February 24, 2017

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

Court Interpreters: Adoption and Amendment of Rules and Forms Relating to Appointment of Interpreters

*Committee or other entity submitting the proposal:*

Court Interpreters Advisory Panel (CIAP)

*Staff contact (name, phone and e-mail):* Anne Marx 415-865-7690 (cel) 510-703-9956, [anne.marx@jud.ca.gov](mailto:anne.marx@jud.ca.gov)

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

Approved by RUPRO: April 14, 2016

Project description from annual agenda: Project #2 A comprehensive evaluation of existing Rule of Court 2.893, Appointment of noncertified interpreters in criminal cases and juvenile delinquency proceedings, and other rules related to court interpreters and Judicial Council INT forms and instructions, and recommend any appropriate revisions to the current forms and Rule of Court.

Determine if Rule of Court 2.893 requires amendments, and consider the possible scope of amendments, and make recommendations accordingly.

*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.)

Note that INT-120, which deals more directly with court operations, rather than interpreter qualifications, has been transferred to CEAC for their review and updating.

# 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

**SPR017-\_\_**

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**Title**

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications

**Action Requested**

Review and submit comments by April 28, 2017

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

Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT-140

**Proposed Effective Date**

January 1, 2018

**Contact**

Anne Marx, Senior Analyst  
[Anne.Marx@jud.ca.gov](mailto:Anne.Marx@jud.ca.gov)  
415-865-7690

**Proposed by**

Court Interpreters Advisory Panel  
Hon. Brian L. McCabe, Chair

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### Executive Summary and Origin

The Court Interpreters Advisory Panel proposes adopting a substantially modified version of the rule that establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters and of the form that provides information about these procedures. The panel also proposes revising the form regarding the qualifications of noncertified and nonregistered interpreters and adopting a new form regarding the temporary use of such interpreters. These changes would implement legislation that took effect January 1, 2015 and clarify existing processes. Additional changes to the rule and to form INT-110 would encourage noncertified and nonregistered interpreters to pursue certified and registered status.

### Background

Although only three percent of all language interpretation in the courts is conducted by noncertified or nonregistered interpreters, the provisional qualification process is still of critical importance to the smooth operation of the courts. Existing statutes, rules, and forms address the provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal and juvenile cases. (See Gov. Code, § 68561.) Rule 2.893 establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal cases and juvenile delinquency proceedings.,

*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.*

*Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter in Criminal and Juvenile Delinquency Proceedings* (form INT-100-INFO) provides some guidance about these procedures and., *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT-110), addresses the qualifications of noncertified and nonregistered interpreters.<sup>1</sup>

Legislation that took effect January 1, 2015 (Assem. Bill 1657; Stats. 2014, ch. 721) added Government Code section 68092.1, which expanded the case types in which interpreters may be provided to include civil cases. The *Strategic Plan for Language Access in the California Courts* (the Language Access Plan),<sup>2</sup> which was adopted on January 22, 2015, also calls for an expansion of the provision of interpreter services into all case types by 2018. Additional legislation that took effect January 1, 2015 (Assem. Bill 2370; Stats. 2014, ch. 424) amended Government Code section 68561, which added requirements about what details must be included on the record whenever an interpreter, including a noncertified or nonregistered interpreter, is appointed. The rule and forms need to be updated to reflect these changes.

While most judicial officers, court staff, and limited English proficiency stakeholders are familiar with the “provisional qualification” components of rule 2.893 and its related forms, there is also a lesser understood provision for the use of an interpreter for a single event only—when absolutely needed—using a different standard. The current structure of the rule does not sufficiently distinguish between these two statuses and therefore has created confusion.

Finally, there is concern that some noncertified and nonregistered interpreters use the provisional qualification process as a way to continue to work in the courts without ever attempting to become certified or registered. The existing rule text does not identify any incentive within the provisional qualification process that would encourage the interpreter to pursue certified or registered status, nor does it provide a procedure for doing so.

## **The Proposal**

The proposal is responsive to concerns or problems that have been raised by judges and courtroom personnel as well as interpreter stakeholders. It is also required to implement recent legislative changes.

### **1. Include all case types when provisionally qualifying interpreters**

As part of implementing the legislation expanding court interpreter services to civil case types, the Court Interpreters Advisory Panel is proposing that the provisional qualification of

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<sup>1</sup> Form INT-120, *Certification of Unavailability of a Certified or Registered Interpreter*, addresses the availability of certified or registered interpreters and the court’s search for one. Since this relates to court operations, the Court Executives Advisory Committee will be reviewing the form and updates to form INT-120 are not part of this proposal.

<sup>2</sup> The plan is available at [www.courts.ca.gov/documents/CLASP\\_report\\_060514.pdf](http://www.courts.ca.gov/documents/CLASP_report_060514.pdf).

interpreters in civil case types should follow the same rules and procedures, and be subject to the same standards, as provisional qualification in criminal and juvenile proceedings. Rule 2.893, form INT-100-INFO, and form INT-110 would be modified to clarify that all case types are considered in the provided guidelines. The rule would be revised to make clear that both noncertified and nonregistered interpreters are subject to the guidelines.

## **2. Implement changes required by Government Code section 68561**

As noted above, recent legislation amended Government Code Section 68561 to require specified findings be made on the record when an interpreter is used. This proposal would rename, modify, and restructure rule 2.893 to include these new requirements:

- Subdivision (c) adds requirements for stating details on the record for the use of certified and registered interpreters, including the language to be interpreted, the interpreter’s name, the interpreter’s certification or registration number, a statement that the interpreter’s identification has been verified, a statement that the interpreter is certified or registered to interpret in the language to be interpreted, and a statement that the interpreter was administered the interpreter’s oath or has an oath on file with the court.
- Subdivisions (d)(2)(D), (E), (F), and (G) add requirements for stating details on the record for the use of noncertified or nonregistered interpreters, including the name of the interpreter, that the interpreter is not certified or registered to interpret in the language to be interpreted, a finding that the interpreter is qualified to interpret in the proceeding as required under the provisional qualification or temporary-use guidelines, and a statement that the interpreter was administered the interpreter’s oath.

## **3. Better distinguish between “provisionally qualified” and “temporary use”**

The adoption of new form INT-140, *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter*, along with restructuring of rule 2.893 and form INT-100-INFO, will help to clarify the requirements and limitations of a temporary use of an interpreter by defining the various types of interpreters and separately addressing their use.

- The text of the rule has been restructured to more clearly distinguish between guidelines for provisional qualification and guidelines for temporary use. Two separate forms—one for the use of a provisionally qualified interpreter (INT-110) and another for the temporary use of an interpreter (INT-140)—make it much easier for court staff to know which process to follow. In addition, each form cross-references the other.
- The form INT-140 process for the temporary use of an interpreter may be handled quickly in the courtroom for a single-use event, while the form INT-110 process is more involved and requires sign-off by the presiding judge. The new form treats temporary use as a separate process.

#### **4. Encourage prospective interpreters to become certified or registered without making it impossible for courts to get interpreters in hard-to-find, other-than-Spanish languages**

The proposed changes to rule 2.893 and form INT-110 include modifications that will encourage noncertified or nonregistered interpreters to continue on the path toward certified or registered status and becoming more competent as a court interpreter while protecting the courts' ability to access interpreters in the most hard-to-find languages. Currently, interpreters are provisionally qualified for six-month periods, and the provisional qualification process is overseen by the presiding judge of the court. The current maximum periods are shorter for Spanish than for other languages, and nothing in this proposal changes any of the maximums or their exceptions.

- **Subdivision (f)(4).** While requirements for the first period of provisional qualification remain unchanged, the proposed amendments in this new subdivision include the following requirements for interpreters requesting their second six-month period of provisional qualification:
  - Must take the State of California Court Interpreter Written Exam at least once in the 12 calendar months leading up to their appointment for a second six-month period;
  - Must have taken the State of California's court interpreter ethics course for interpreters seeking appointment as a noncertified or nonregistered interpreter, or already be certified or registered in a different language from the one in which they are being appointed for a second six-month period; and
  - Must have taken the State of California's online court interpreter orientation course, or be certified or registered in a different language from the one in which they are being appointed.
- **Subdivision (f)(5).** The proposed amendments in this new subdivision include the following requirements for interpreters requesting their third or subsequent six-month period of provisional qualification:
  - Must have taken and passed the State of California Court Interpreter Written Exam; and
  - Must have taken either the Bilingual Interpreting Exam or the relevant Oral Proficiency Exam for their language pairing at least once during the 12 calendar months leading up to the appointment.

While the committee believes these changes may increase the number of interpreters who seek certified or registered status, instead of remaining long-term provisionally qualified interpreters, they remain very aware of court concerns about accessing interpreters in hard-to-find languages. Interpreters in very rare or hard-to-find languages will not be required to meet these additional requirements.

- **Subdivision (f)(7)** accordingly assures that interpreters in languages with fewer than 25 people on the Judicial Council's master list of certified and registered interpreters (Master List) will not be subject to these new requirements. (For example, the requirements would

currently apply to Spanish, Mandarin, Korean, French, Farsi, Vietnamese, and Russian interpreters, but would not apply to interpreters in hard-to-find languages.)

- **Subdivision (f)(6)** includes further protections to the supply of needed interpreters by carving out requirements related to taking the oral exams and by making clear that subdivision (f)(5)(b) will not apply to any interpreter who seeks appointment in a language pairing for which no exam is available. For example, this would currently apply to the Japanese-to-English pairing or to someone seeking appointment as a Spanish-to-indigenous language interpreter.

Please note that, because the proposed changes to rule 2.893 and form INT-100-INFO are so extensive, these changes are not shown with underlining, strikeouts, and shading. Instead, the committee is proposing repealing/revoking the existing rule and form and replacing them with the substantially modified versions attached to this invitation to comment.

## **5. Make Other Changes to form INT-110**

Other proposed changes to form INT – 110 include:

- The introduction section establishes whether or not the interpreter works in a language, or language pairing, for which there is no testing.
- Questions 2, 4(b) & (c), 6(b) & (c) help the court better assess an interpreter's preparations for court interpreting by looking at interpreter or translator credentials which the interpreter might hold and the time the interpreter has spent observing court, in legal training, working as an interpreter, or under the guidance of a certified or registered court interpreter mentor.
- Question 6(a) specifies additional types of proceedings or events in which the interpreter may have worked during the previous six months.

## **Alternatives Considered**

Several alternatives were considered, as outlined below.

### **Establishing different provisional qualification standards for case types outside of criminal and juvenile**

The committee considered whether a different provisional qualification standard would be appropriate outside of the criminal and juvenile case types. In consideration of the Language Access Plan, which specifically recommended the same level of qualification for different case types (Recommendation 8), and because no compelling arguments to support different qualification standards were raised, the committee decided to modify the process to cover all case types.

### **Not clarifying the use of temporary interpreters**

- The committee considered not making changes to rule 2.893 regarding the use of temporary interpreters. However, the committee believes the existing rule text creates significant confusion as to the applicability of form INT-110 when an interpreter is not going to be

provisionally qualified. In the end, the committee determined that the proposed changes to the rule would provide the greatest clarity.

- The committee considered making changes to the rule without creating the new form INT-140, which is specifically about one-time, temporary interpreters. The committee also considered modifying form INT-110 to have two sections: one related to provisional qualification and one related to temporary interpreters. After reviewing mockups of a split INT-110, the committee determined that the greatest clarity is provided by the current proposal for two separate forms.

**Not exempting interpreters who are provisionally qualified, *OR* Exempting interpreters when a number other than 25 are registered or certified in a language**

- The committee discussed applying the same requirements for the second and subsequent six-month provisional qualification periods to all interpreters regardless of language. There were concerns that courts would then face insurmountable barriers to providing language access in certain rarely used languages. Applying the same requirements for testing, orientation classes, and ethics courses to all interpreters—even those working in languages with very few interpreting resources—would likely create hardships for courts, especially smaller and more remote courts. The committee decided to create exemptions for such situations.
- In determining how best to balance court interests in accessing interpreters in hard-to-find languages with encouraging interpreters to pursue certified and registered status, the committee considered both higher and lower thresholds for the exemption. Based on the 25 interpreter minimum, the committee reviewed which languages would currently be subject to the second and third or subsequent six-month-period requirements for provisional qualification and decided 25 was the best cutoff point. With 25 as the cutoff, interpreters in very rare or hard-to-find languages would not be required to meet the additional requirements.
- Prospective interpreters in languages with 25 or more interpreters on the Master List already have more preparation resources available to them, including training opportunities, the possibility of seeking out a mentor, and additional on-the-job or volunteer experience.
- Articulating the various types of triggers for provisional qualification may encourage all prospective interpreters to pursue certified or registered status. The detailed requirements in updated form INT-110 create a clear roadmap for the types of preparation that can have the greatest potential to assist interpreters in passing the qualifying exams for certified and registered status.

**Lengthening or shortening the provisional qualification periods**

In considering likely court concerns about how this revised process might discourage interpreters from working in the courts, the committee considered lengthening the six-month periods of provisional qualification. In the end, the committee chose to stay with the existing six-month

periods and believes that the exemption to meeting the new requirements in subdivision (f)(7) of the rule will create sufficient safeguards for the courts.

### **Requiring a database of provisionally qualified interpreters**

As the committee considered the possible impacts of multiple requirements spread over multiple six-month periods of provisional qualification, they discussed the idea of creating a database that could aid in tracking provisional qualification status. While the committee believed such a database might be useful, it did not feel that centralized tracking was required and was concerned about delaying the needed changes to the rule and to forms INT-100-INFO and INT-110. The committee believed that the period-tracking questions and the signature under penalty of perjury elements on form INT-110 would be sufficient to ensure courts were accessing interpreters in a manner consistent with the updated rule.

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

No significant costs are anticipated if the proposal is implemented. While new form INT-140 and changes to rule 2.893 and form INT-110 may necessitate some training, the training is not believed to be extensive or difficult to implement. Further, the changes clarifying the use of a temporary interpreter versus a provisionally qualified interpreter would make existing protocols more self-explanatory.

## 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 four stated purposes?
- Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for courts to get interpreters in hard-to-find, other-than-Spanish languages?
- Does the length of the individual provisional qualification periods seem too short, too long, or just right?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- 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 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? (Note: Such a database may be developed in the future, but is not a part of this proposal.)
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 2.893, at pages 9–16
2. Form INT-100-INFO, at pages 17–18
3. Form INT-110, at pages 19–24
4. Form INT-140, at pages 25–26

Rule 2.893 of the California Rules of Court would be repealed and adopted, effective January 1, 2018, to read:

1 **Rule 2.893. Appointment of interpreters in court proceedings**

2  
3 **(a) Application**

4  
5 This rule applies to all trial court proceedings in which the court appoints an  
6 interpreter for a Limited English Proficient (LEP) person. This rule applies to  
7 spoken language interpreters in languages designated and not designated by the  
8 Judicial Council.

9  
10 **(b) Definitions**

11 As used in this rule:

- 12  
13  
14 (1) “Designated language” means a language selected by the Judicial Council for  
15 the development of a certification program under Government Code section  
16 68562;
- 17  
18 (2) “Certified interpreter” means an interpreter who is certified by the Judicial  
19 Council to interpret a language designated by the Judicial Council under  
20 Government Code section 68560 et seq;
- 21  
22 (3) “Registered interpreter” means an interpreter in a language not designated by  
23 the Judicial Council, who is qualified by the court under the qualification  
24 procedures and guidelines adopted by the Judicial Council, and who has  
25 passed a minimum of an English fluency examination offered by a testing  
26 entity approved by the Judicial Council under Government Code section  
27 68560 et seq.;
- 28  
29 (4) “Noncertified interpreter” means an interpreter who is not certified by the  
30 Judicial Council to interpret a language designated by the Judicial Council  
31 under Government Code section 68560 et seq.;
- 32  
33 (5) “Nonregistered interpreter” means an interpreter in a language not designated  
34 by the Judicial Council who has not been qualified under the qualification  
35 procedures and guidelines adopted by the Judicial Council under Government  
36 Code section 68560 et seq.;
- 37  
38 (6) “Provisionally qualified” means an interpreter who is neither certified nor  
39 registered but has been qualified under the good cause and qualification  
40 procedures and guidelines adopted by the Judicial Council under Government  
41 Code section 68560 et seq.;
- 42

1           (7) “Temporary interpreter” means an interpreter who is not certified, registered,  
2           or provisionally qualified, but is used one time, in a brief, routine matter.

3  
4           **(c) Appointment of certified or registered interpreters**

5  
6           If a court appoints a certified or registered court interpreter, the judge in the  
7           proceeding must require the following to be stated on the record:

- 8  
9           (1) The language to be interpreted;  
10  
11          (2) The name of the interpreter;  
12  
13          (3) The interpreter’s current certification or registration number;  
14  
15          (4) A statement that the interpreter’s identification has been verified as required  
16          by statute;  
17  
18          (5) A statement that the interpreter is certified or registered to interpret in the  
19          language to be interpreted; and  
20  
21          (6) A statement that the interpreter was administered the interpreter’s oath or that  
22          he or she has an oath on file with the court.

23  
24          **(d) Appointment or use of noncertified or nonregistered interpreters**

25  
26          (1) *When permissible*  
27          If after a diligent search a certified or registered interpreter is not available,  
28          the judge in the proceeding may either appoint a noncertified or nonregistered  
29          interpreter who has been provisionally qualified under (d)(3) or, in the  
30          limited circumstances specified in (d)(4), may use a noncertified or  
31          nonregistered interpreter who is not provisionally qualified.

32  
33          (2) *Required record*

34          In all cases in which a noncertified or nonregistered interpreter is appointed  
35          or used, the judge in the proceeding must require the following to be stated  
36          on the record:

37  
38          (A) The language to be interpreted;

39  
40          (B) A finding that a certified or registered interpreter is not available and a  
41          statement regarding whether a *Certification of Unavailability of*  
42          *Certified or Registered Interpreter* (form INT-120) for the language to  
43          be interpreted is on file for this date with the court administrator;

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- (C) A finding that good cause exists to appoint a noncertified or nonregistered interpreter;
- (D) The name of the interpreter;
- (E) A statement that the interpreter is not certified or registered to interpret in the language to be interpreted;
- (F) A finding that the interpreter is qualified to interpret in the proceeding as required in (d)(3) or (d)(4); and
- (G) A statement that the interpreter was administered the interpreter’s oath.

(3) Provisional qualification

- (A) A noncertified or nonregistered interpreter is provisionally qualified if the presiding judge of the court or other judicial officer designated by the presiding judge:
  - (i) Finds the noncertified or nonregistered interpreter to be provisionally qualified following the *Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter as Either Provisionally Qualified or Temporary* (form INT-100-INFO); and
  - (ii) Signs an order allowing the interpreter to be considered for appointment on *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT-110). The period covered by this order may not exceed a maximum of six months.
- (B) To appoint a provisionally qualified interpreter, in addition to the matters that must be stated on the record under (d)(2), the judge in the proceeding must find on the record:
  - (i) That the interpreter is qualified to interpret the proceeding, following procedures adopted by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120); and
  - (ii) If applicable, that good cause exists under (f)(1)(B) for the court to appoint the interpreter beyond the time ordinarily allowed in (f);

1 (4) Temporary use  
2 A noncertified or nonregistered interpreter who is not provisionally qualified  
3 under (d)(3) may be temporarily used in a brief, routine matter if:  
4

5 (A) At the request of an LEP person, the judge in the proceeding finds on  
6 the record that:

7  
8 (i) The LEP person has been informed and has waived the  
9 appointment of a certified or registered interpreter or an  
10 interpreter who could be provisionally qualified by the  
11 presiding judge as provided in (d)(3);

12  
13 (ii) Good cause exists to appoint an interpreter who is not certified,  
14 registered, or provisionally qualified; and

15  
16 (iii) The interpreter is qualified to interpret that proceeding,  
17 following procedures adopted by the Judicial Council (see  
18 forms INT-100-INFO and INT-140).

19  
20 (B) The use of an interpreter under this subdivision is limited to a single  
21 brief, routine matter before the court. The use of the interpreter in this  
22 circumstance may not be extended to subsequent proceedings without  
23 again following the procedure set forth in this subdivision.  
24

25 (5) If a party objects to the appointment of the proposed interpreter or waives the  
26 appointment of a certified or registered interpreter, that objection or waiver  
27 must be made on the record.  
28

29 (e) **Appointment of intermediary interpreters working between two languages**  
30 **that do not include English**

31  
32 An interpreter who works as an intermediary between two languages that do not  
33 include English (a relay interpreter) is not eligible to become certified or registered.  
34 However, a relay interpreter can become provisionally qualified if the judge finds  
35 that he or she is qualified to interpret the proceeding following procedures adopted  
36 by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120). The  
37 limitations in (f) below do not apply to relay interpreters.  
38

1 **(f) Limit on appointment of provisionally qualified noncertified and**  
2 **nonregistered interpreters**

- 3
- 4 (1) A noncertified or nonregistered interpreter who is provisionally qualified  
5 under (d)(3) may not interpret in any trial court for more than any four  
6 six-month periods, except in the following circumstances:
- 7
- 8 (A) A noncertified interpreter of Spanish may be allowed to interpret for no  
9 more than any two six-month periods in counties with a population  
10 greater than 80,000.
- 11
- 12 (B) A noncertified or nonregistered interpreter may be allowed to interpret  
13 more than any four six-month periods, or any two six-month periods  
14 for an interpreter of Spanish under (f)(1)(A), if the judge in the  
15 proceeding makes a specific finding on the record in each case in which  
16 the interpreter is sworn that good cause exists to appoint the interpreter,  
17 notwithstanding the interpreter’s failure to achieve Judicial Council  
18 certification.
- 19
- 20 (2) Except as provided in (f)(3), each six-month period under (f)(1) begins on the  
21 date a presiding judge signs an order under (d)(3)(A)(ii) allowing the  
22 noncertified or nonregistered interpreter to be considered for appointment.
- 23
- 24 (3) If an interpreter is provisionally qualified under (d)(3) in more than one court  
25 at the same time, each six-month period runs concurrently for purposes of  
26 determining the maximum periods allowed in this subdivision.
- 27
- 28 (4) Beginning with the second six-month period under (f)(1), a noncertified or  
29 nonregistered interpreter may be appointed if he or she meets all of the  
30 following conditions:
- 31
- 32 (A) The interpreter has taken the State of California Court Interpreter  
33 Written Exam at least once during the 12 calendar months before the  
34 appointment;
- 35
- 36 (B) The interpreter has taken the State of California’s court interpreter  
37 ethics course for interpreters seeking appointment as a noncertified or  
38 nonregistered interpreter, or is certified or registered in a different  
39 language from the one in which he or she is being appointed; and  
40  
41

1 (C) The interpreter has taken the State of California’s online court  
2 interpreter orientation course, or is certified or registered in a different  
3 language from the one in which he or she is being appointed.  
4

5 (5) Beginning with the third six-month period under (f)(1), a noncertified or  
6 nonregistered interpreter may be appointed if he or she meets all of the  
7 following conditions:  
8

9 (A) The interpreter has taken and passed the State of California Court  
10 Interpreter Written Exam with such timing that he or she is eligible to  
11 take a Bilingual Interpreting Exam; and  
12

13 (B) The interpreter has taken either the Bilingual Interpreting Exam or the  
14 relevant Oral Proficiency Exam(s) for his or her language pairing at  
15 least once during the 12 calendar months before the appointment.  
16

17 (6) The restrictions in (f)(5)(B) do not apply to any interpreter who seeks  
18 appointment in a language pairing for which no exam is available.  
19

20 (7) The restrictions in (f)(4) and (5) may be waived by the presiding judge for  
21 good cause whenever there are fewer than 25 certified or registered  
22 interpreters enrolled on the Judicial Council’s statewide roster for the  
23 language requiring interpretation.  
24

25 **Advisory Committee Comment**  
26

27 **Subdivisions (c) and (d)(2).** When a court reporter is transcribing the proceedings, or an  
28 electronic recording is being made of the proceedings, a judge may satisfy the “on the record”  
29 requirement by stating the required details of the interpreter appointment in open court. If there is  
30 no court reporter and no electronic recording is being made, the “on the record” requirement may  
31 be satisfied by stating the required details of the interpreter appointment and documenting them in  
32 writing—such as in a minute order, the official clerk’s minutes, a formal order, or even a  
33 handwritten document—that is entered in the case file.

1 **Rule 2.893. Appointment of noncertified interpreters in criminal cases and juvenile**  
2 **delinquency proceedings**

3 ~~(a) Application~~

4 This rule applies to trial court proceedings in criminal cases and juvenile delinquency  
5 proceedings under Welfare and Institutions Code section 602 et seq. in which the  
6 court determines that an interpreter is required.

7 ~~(b) Appointment of noncertified interpreters~~

8 An interpreter who is not certified by the Judicial Council to interpret a language  
9 designated by the Judicial Council under Government Code section 68560 et seq. may  
10 be appointed under Government Code section 68561(e) in a proceeding if:

11 ~~(1) Noncertified interpreter provisionally qualified~~

12 ~~(A) The presiding judge of the court, or other judicial officer designated by the~~  
13 ~~presiding judge:~~

14 ~~(i) Finds the noncertified interpreter to be provisionally qualified~~  
15 ~~following the *Procedures and Guidelines to Appoint a Noncertified*~~  
16 ~~*Interpreter in Criminal and Juvenile Delinquency Proceedings*~~  
17 ~~*(Designated Languages)* (form IN 100); and~~

18 ~~(ii) Signs an order allowing the interpreter to be considered for~~  
19 ~~appointment on *Qualifications of a Noncertified Interpreter* (form IN-~~  
20 ~~110); and~~

21 ~~(B) The judge in the proceeding finds on the record that:~~

22 ~~(i) Good cause exists to appoint the noncertified interpreter; and~~

23 ~~(ii) The interpreter is qualified to interpret the proceeding, following~~  
24 ~~procedures adopted by the Judicial Council (see forms IN 100, IN 110,~~  
25 ~~and IN 120).~~

26 ~~(C) Each order of the presiding judge under (b)(1) finding a noncertified~~  
27 ~~interpreter to be provisionally qualified and allowing the interpreter to be~~  
28 ~~considered for appointment in a proceeding is for a six-month period.~~

29 ~~(2) Noncertified interpreter not provisionally qualified~~

30 ~~(A) To prevent burdensome delay or in other unusual circumstances, at the~~  
31 ~~request of the defendant, or of the minor in a juvenile delinquency~~  
32 ~~proceeding, the judge in the proceeding may appoint a noncertified~~

1 ~~interpreter who is not provisionally qualified under (b)(1) to interpret a~~  
2 ~~brief, routine matter provided the judge, on the record:~~

3 ~~(i) Indicates that the defendant or minor has waived the appointment of a~~  
4 ~~certified interpreter and the appointment of an interpreter found~~  
5 ~~provisionally qualified by the presiding judge;~~

6 ~~(ii) Finds that good cause exists to appoint an interpreter who is neither~~  
7 ~~certified nor provisionally qualified; and~~

8 ~~(iii) Finds that the interpreter is qualified to interpret that proceeding.~~

9 ~~(B) The findings and appointment under (b)(2)(A) made by the judge in the~~  
10 ~~proceeding are effective only in that proceeding. The appointment must not~~  
11 ~~be extended to subsequent proceedings without an additional waiver,~~  
12 ~~findings, and appointment.~~

## PROCEDURES TO APPOINT A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER PROVISIONALLY QUALIFIED OR TEMPORARY

The court is required to appoint a certified or registered interpreter. If a certified or registered interpreters is not available, the court may **provisionally qualify** (Cal. Rules of Court, rule 2.893(d)(3)) or **temporarily use** an interpreter (Cal. Rules of Court, rule 2.893(d)(4)). *These procedures include different instructions for provisional qualification and temporary use.*

### How does the court appoint a potential noncertified or nonregistered interpreter?

- The court must determine if a certified or registered interpreter is expected to be available by reviewing and completing a *Certification of Unavailability of Certified or Registered Interpreter* (form INT-120). Form INT-120 must be completed, signed, and filed on the day of the proceeding.
- The court must also determine if a noncertified or nonregistered interpreter is being temporarily used per rule 2.893(b)(7) and (d)(4) or if the interpreter needs to be provisionally qualified or is already provisionally qualified.

### What is the process for provisionally qualifying an interpreter?

- To provisionally qualify an interpreter, the presiding judge or judicial designee must review the declaration on *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) and sign the six-month Finding of Provisional Qualification and Order of the Presiding Judge.
- Requirements to provisionally qualify an interpreter are different during the first six-month period and subsequent six-month periods. The presiding judge or judicial designee should be careful to review whether the proposed interpreter has met those requirements under rule 2.893(f).

### What is the process for temporary use of an interpreter?

- After the interpreter has completed and signed the *Temporary Interpreter Declaration on Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-140), the judge must review and sign the Finding of Qualification for a Single Proceeding.
- The judge's finding must include that the Limited English Proficient (LEP) person has waived the appointment of a certified or registered interpreter.
- Form INT-140 is intended for a single, brief appearance before the court and may not be extended to subsequent proceedings without completing a new form INT-140.

### What are the record-keeping requirements when using a noncertified or nonregistered interpreter?

- There are specific requirements as to **who** must make findings on the record and **what** details must be included whenever a noncertified or nonregistered interpreter is used. To learn more about these requirements in each situation, review rule 2.893(d)(2) and (d)(4)(A) of the California Rules of Court.
- File the completed *Certification of Unavailability of Certified or Registered Interpreter* (form INT-120) with the court on the day of the proceeding.
- Process the completed *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) in accordance with the court's record-keeping procedures.
- Retain the completed *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-140) in the case file.

**PROCEDURES TO APPOINT A NONCERTIFIED OR  
NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER  
PROVISIONALLY QUALIFIED OR TEMPORARY**

**What does an interpreter need to do to become provisionally qualified?**

- Complete and sign under oath the *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) and submit it to the court.
- Renew the declaration in form INT-110 after the first six months *if* the interpreter remains uncertified or unregistered and provisionally qualified.
- If seeking provisional qualification in additional six-month periods, the interpreter must take the written court interpreter exam, required ethics courses and/or relevant bilingual interpreting or oral proficiency exams. These requirements are detailed in rule 2.893 of the California Rules of Court.

QUALIFICATIONS OF A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER

INT-110

INTERPRETER NAME:
LANGUAGE:
[ ] Original filing in this court
Mark which 6-month period applies to this interpreter: 1st 2nd 3+
[ ] Within the period allowed by Cal. Rules of Court, rule 2.893
[ ] Beyond the period allowed by Cal. Rules of Court, rule 2.893
NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT (IF ANY):
FOR COURT USE ONLY (FILE WITH THE COURT ADMINISTRATOR)
DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL

This form is used to appoint a PROVISIONALLY QUALIFIED interpreter for a 6-month period under rule 2.893(d)(4). If you are using a temporary interpreter in a single brief appearance only, use form INT-140.

Interpreter's name: Phone (home):
Address: Phone (work):
Driver's license: State:
Language: OR State I.D.: State:

Please mark all that apply:

- [ ] Designated language: noncertified interpreter
[ ] Nondesignated language: nonregistered interpreter
[ ] Provisionally qualifying for a 6-month period
[ ] Language with no certified or registered status available, either not working from English to another language (relay interpreter) or no certified exam available in the language pairing

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the interpreter should be considered by the court to determine whether the interpreter is appointed to interpret the stated language.

1. Previous provisional qualification periods (since January 1996)

- a. Since January 1, 1996, have you been provisionally qualified by a presiding judge in this court or any other court under Cal. Rules of Court, rule 2.893?
[ ] No
[ ] Yes. For each period state (see p. 5):
Beginning date: Court:
Beginning date: Court:
Beginning date: Court:
Beginning date: Court:
b. Since January 1, 1996, have you interpreted in any court without being provisionally qualified?
[ ] No [ ] Yes (explain, giving court names and dates):

2. Interpreter and translator credentials

Please list the two most relevant interpreter or translator credentials you currently hold, and which are in good standing (e.g., court interpreter certification from another state, in another language, or for the federal courts; ATA certification; community college certificate; etc.):

Credential name: ID #:
Language pair: Date of initial credential:
Credential name: ID #:
Language pair: Date of initial credential:

INTERPRETER (name):	COURT NAME:
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**3. Interpreter examinations and evaluations (related to credentials you do not currently hold)**

a. Have you taken the State of California Bilingual Interpreting Exam (BIE) or the Oral Proficiency Exam in English (OPE) and/or in the other language to be interpreted? (list all exams, date taken, and results)

None taken

Yes (fill in below):

Exam/language: (date): What were the results?

b. Have you taken the Federal Court Interpreter Certification Examination?

Yes (dates): What were the results?

No (check one):  Not taken  Not given in the language specified above

c. Have you taken a Court Interpreter Certification Examination from other states?

Yes (dates): Give states and results of each:

No (check one):  Not taken  Not given in the language specified above

d. Have your interpreting skills been evaluated in any other way?  Yes  No

If yes, which aspects of your skills were evaluated? (check all that apply):

Interpreting modes:

Consecutive  Simultaneous  Sight translation

Other (specify):

What languages?

When were you evaluated?

What were the results?

Which authority evaluated your skills?

**4. Interpreting and translation training**

a. Institutions attended:

Year:

Year:

Year:

b. Court interpreting observation (please indicate number of hours you have observed court interpreters in the courtroom setting):

c. Legal/court interpreting training (select one):

(1)  40 or more hours of training in legal interpreting in the last 2 years

(2)  80 or more hours of training in legal interpreting in the last 4 years

(3)  Less legal training than either (1) or (2) during the identified time period

**5. Teaching experience**

Do you have any language teaching experience?  Yes  No

If yes, which languages?

At what levels?

INTERPRETER (name):	COURT NAME:
---------------------	-------------

**6. Interpreting experience**

- a. Have you interpreted in any court or administrative proceedings?  Yes  No  
 Please mark how many proceedings or events you have interpreted in the last 6 months for each type:
- |          |              |                   |                         |
|----------|--------------|-------------------|-------------------------|
| Criminal | Traffic      | Juvenile          | Family                  |
| Civil    | Small Claims | Unlawful Detainer | Probate/Conservatorship |
- Dates (if known):  List the last two counties you have worked in:
- What languages?
- Which modes of interpreting did you employ? (check all that apply):
- Consecutive  Simultaneous  Sight translation

- b. Have you interpreted in any noncourt setting?  Yes  No  
 Please list, (medical, business, education, community, other):
- Number of events interpreted in the last 6 months:
- Is your role as an interpreter compensated?  Yes  No
- Approximate number of total days:
- What languages?
- Which modes of interpreting did you employ? (check all that apply):
- Consecutive  Simultaneous  Sight translation

- c. Have you had 72 hours of legal interpreting experience with, or under the guidance of, a certified or registered court interpreter mentor (includes police interpreted work, depositions, etc., as well as mock trials and other court training simulations)?  Yes  No

**7. Translation**

- a. Do you have any experience in written translation?  Yes  No
- b. List types of documents:
- c. What languages?

**8. Code of professional conduct/ethics**

- a. Have you had any training in professional ethics for court interpreters?  Yes  No  
 Please explain:
- b. Have you taken the State of California's court interpreter ethics course for interpreters seeking provisional qualification?  Yes (date):   No  
 (Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)
- c. Do you have a copy of the Standards of Professional Conduct for Court Interpreters?  Yes  No
- d. Have you read and do you understand the Standards of Professional Conduct for Court Interpreters?  Yes  No

**9. Training in legal terminology**

What training have you received in California legal terminology as required by Government Code section 68564?

<b>INTERPRETER (name):</b>	<b>COURT NAME:</b>
----------------------------	--------------------

**10. Orientation to court interpreting**

a. Have you received training in criminal procedure?  Yes  No

Please describe:

b. Have you received training in civil procedure?  Yes  No

Please describe:

c. Have you taken the Judicial Council's online court interpreter orientation course?  Yes (date):  No

(Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)

**11. General education**

Highest level degree attained:

High school  Jr. college  University  Graduate degree  Postgraduate

Name of institution:

Degree awarded: Year: Major:

Degree awarded: Year: Major:

**12. Language training**

a. How did you learn English? (mark N/A if not interpreting in English)

b. How did you learn the language to be interpreted?

c. In which languages were you educated?

Language (specify):	Elementary	Jr. high	High school	University
(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. What languages  are  were spoken at home (specify):

**13. Disqualifications, decertifications, or criminal offenses**

a. Have you had any certifications that have lapsed or have you been disqualified from interpreting in any court or administrative hearing?  Yes  No

Please provide detail:

b. What is your relationship to the party?  Acquainted  Related  Do not know party

Please explain or provide detail:

c. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? (Do not include traffic infractions.)  Yes  No

If yes, please explain:

INTERPRETER (name):	COURT NAME:
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**INTERPRETER'S DECLARATION**

Once an interpreter is provisionally qualified in one court, the relevant 6-month period applies to all courts. Please complete this declaration based on the timing of your provisional qualification status in any California trial court.

(Check all that apply)

1.  I am unable to become certified or registered because there are no exams in my language pairing.
2.  I am 18 years of age or older.
3.  I have **never** been provisionally qualified or appointed to interpret in any trial court under California Rules of Court, rule 2.893.
4.  I have been provisionally qualified in a different court, and I am currently in my first 6-month period of provisional qualification with any California trial court.
5.  I am in my second or subsequent 6-month period of provisional qualification, and I have met the specific testing and course requirements required under rule 2.893(f)(4) or (5).
6.  **Noncertified interpreters only**

I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

- a.  I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893).
  - (1) Two 6-month periods for noncertified Spanish interpreters in counties with a population greater than 80,000
  - (2) Four 6-month periods for noncertified Spanish interpreters in counties with a population less than 80,000
  - (3) Four 6-month periods for noncertified interpreters of designated languages other than Spanish
- b.  I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

7.  **Nonregistered interpreters only**

I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

- a.  I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893):
  - (1) Four 6-month periods for nonregistered interpreters.
- b.  I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

I declare under penalty of perjury under the laws of the State of California that the information provided above and on the preceding pages is true and correct. I understand that any false or misleading statements disqualify me from being considered for interpreting assignments in the trial courts, in addition to other penalties provided by law.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF PROSPECTIVE INTERPRETER)

INTERPRETER (name):	COURT NAME:
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**PROVISIONAL QUALIFICATION and ORDER OF THE PRESIDING JUDGE**

(Gov. Code, §§ 68561(c) & (d), 68564(d) & (e), and 71802(b)(1) & (d))

1. **Interpreter (name):** \_\_\_\_\_ **Case Number:** \_\_\_\_\_
2. **Language:** \_\_\_\_\_ **Date of Proceeding:** \_\_\_\_\_
3. **Finding:** For six months from the date of this order, the above-named interpreter is found to be provisionally qualified to be considered for appointment to interpret the language specified in any proceeding in this court, and
- a.  has not exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.
  - b.  has exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893, but good cause exists under rule 2.893 to continue appointing the interpreter.
  - c.  is in their second or greater 6-month provisional qualification period and has met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5).
  - d.  is in their second or greater 6-month provisional qualification period and has not met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5), but good cause exists under rule 2.893 to continue appointing the interpreter.
4. THE COURT ORDERS that the above-named interpreter may be considered for appointment by any judge of this court to interpret the specified language in any proceeding for which the judge in the proceeding finds the interpreter to be qualified. **This order expires six months from the date of signature.**

Date:

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

\_\_\_\_\_  
 PRESIDING JUDGE       DESIGNATED JUDICIAL OFFICER

TEMPORARY USE OF A NONCERTIFIED OR NONREGISTERED  
SPOKEN LANGUAGE INTERPRETER

INT-140

<b>INTERPRETER NAME:</b> <b>LANGUAGE:</b> <input type="checkbox"/> Original filing in this court <b>Case number:</b> <b>Date of proceeding:</b>	<i>FOR COURT USE ONLY (FILE WITH THE COURT ADMINISTRATOR)</i>  <b>DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT (IF ANY):</b>	
This form is used to establish the qualifications of a TEMPORARY INTERPRETER for the proceeding listed below. Temporary interpreters under Cal. Rules of Court, rule 2.893(d)(4) may be used in brief appearances such as to set a continued hearing date. <b>To appoint a provisionally qualified interpreter for a 6-month period, use form INT-110.</b>	

Interpreter's name: Phone (home):  
Address: Phone (work):  
Driver's license.: State:  
Language: **OR** State I.D.: State:

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the temporary interpreter should be considered by the court to determine whether the interpreter may be used to interpret the stated language in the proceeding above.

**1. General education**

Highest level degree attained:  
 High school  Jr. college  University  Graduate degree  Postgraduate  
Name of institution:  
Degree awarded: Year: Major:  
Degree awarded: Year: Major:

**2. Language training**

- a. How did you learn English? (mark N/A if not interpreting in English):
- b. How did you learn the language to be interpreted?
- c. In which languages were you educated?

Language (specify):	Elementary	Jr. high	High school	University
(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- d. What languages  are  were spoken at home (specify):

INTERPRETER (name):	COURT NAME:
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**3. Disqualifications, decertifications, or criminal offenses**

a. Have you had any certifications that have lapsed or have you been disqualified from interpreting in any court or administrative hearing?  Yes  No

Please provide detail:

b. What is your relationship to the party?  Acquainted  Related  Do not know party

Please explain or provide detail:

c. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? (Do not include traffic infractions.)  Yes  No

If yes, please explain:

**TEMPORARY INTERPRETER DECLARATION**

**I am 18 years of age or older and 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 PROSPECTIVE INTERPRETER)
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**FINDING OF QUALIFICATION FOR A SINGLE PROCEEDING  
(Cal. Rules of Court, rule 2.893(d)(4))**

- 1. **Interpreter (name):** \_\_\_\_\_ **Case Number:** \_\_\_\_\_
- 2. **Language:** \_\_\_\_\_ **Date of Proceeding:** \_\_\_\_\_
- 3. **Finding: Under Cal. Rules of Court, 2.893(d)(4), good cause exists to use** the above-named temporary interpreter, who is found to be qualified to interpret THE PROCEEDING LISTED ABOVE and not for a 6-month period.

Additionally, the judge has indicated on the record that **the limited English proficient (LEP) person has waived the appointment of a certified, registered, or provisionally qualified interpreter.**

4. THE COURT ORDERS that the above-named individual may be used to interpret the specified language for which the judge in the proceeding finds the temporary interpreter to be qualified. **This order expires at the conclusion of the listed proceeding.**

Date:

(TYPE OR PRINT NAME)	<input type="checkbox"/>	JUDGE OF THE SUPERIOR COURT
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## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** Thursday, February 24, 2017

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

Court Interpreters: Adoption and Amendment of Rules and Forms Relating to Appointment of Interpreters

*Committee or other entity submitting the proposal:*

Court Interpreters Advisory Panel (CIAP)

*Staff contact (name, phone and e-mail):* Anne Marx 415-865-7690 (cel) 510-703-9956, [anne.marx@jud.ca.gov](mailto:anne.marx@jud.ca.gov)

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

Approved by RUPRO: April 14, 2016

Project description from annual agenda: Project #2 A comprehensive evaluation of existing Rule of Court 2.893, Appointment of noncertified interpreters in criminal cases and juvenile delinquency proceedings, and other rules related to court interpreters and Judicial Council INT forms and instructions, and recommend any appropriate revisions to the current forms and Rule of Court.

Determine if Rule of Court 2.893 requires amendments, and consider the possible scope of amendments, and make recommendations accordingly.

*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.)

Note that INT-120, which deals more directly with court operations, rather than interpreter qualifications, has been transferred to CEAC for their review and updating.

# 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

**SPR017-\_\_**

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**Title**

Court Interpreters: Noncertified and Nonregistered Spoken Language Interpreter Qualifications

**Action Requested**

Review and submit comments by April 28, 2017

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

Repeal and adopt Cal. Rules of Court, rule 2.893; revoke and adopt form INT-100-INFO; revise form INT-110; and adopt form INT-140

**Proposed Effective Date**

January 1, 2018

**Contact**

Anne Marx, Senior Analyst  
[Anne.Marx@jud.ca.gov](mailto:Anne.Marx@jud.ca.gov)  
415-865-7690

**Proposed by**

Court Interpreters Advisory Panel  
Hon. Brian L. McCabe, Chair

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### Executive Summary and Origin

The Court Interpreters Advisory Panel proposes adopting a substantially modified version of the rule that establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters and of the form that provides information about these procedures. The panel also proposes revising the form regarding the qualifications of noncertified and nonregistered interpreters and adopting a new form regarding the temporary use of such interpreters. These changes would implement legislation that took effect January 1, 2015 and clarify existing processes. Additional changes to the rule and to form INT-110 would encourage noncertified and nonregistered interpreters to pursue certified and registered status.

### Background

Although only three percent of all language interpretation in the courts is conducted by noncertified or nonregistered interpreters, the provisional qualification process is still of critical importance to the smooth operation of the courts. Existing statutes, rules, and forms address the provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal and juvenile cases. (See Gov. Code, § 68561.) Rule 2.893 establishes the procedures for provisional qualification and temporary use of noncertified and nonregistered spoken language interpreters in criminal cases and juvenile delinquency proceedings.,

*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.*

*Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter in Criminal and Juvenile Delinquency Proceedings* (form INT-100-INFO) provides some guidance about these procedures and., *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT-110), addresses the qualifications of noncertified and nonregistered interpreters.<sup>1</sup>

Legislation that took effect January 1, 2015 (Assem. Bill 1657; Stats. 2014, ch. 721) added Government Code section 68092.1, which expanded the case types in which interpreters may be provided to include civil cases. The *Strategic Plan for Language Access in the California Courts* (the Language Access Plan),<sup>2</sup> which was adopted on January 22, 2015, also calls for an expansion of the provision of interpreter services into all case types by 2018. Additional legislation that took effect January 1, 2015 (Assem. Bill 2370; Stats. 2014, ch. 424) amended Government Code section 68561, which added requirements about what details must be included on the record whenever an interpreter, including a noncertified or nonregistered interpreter, is appointed. The rule and forms need to be updated to reflect these changes.

While most judicial officers, court staff, and limited English proficiency stakeholders are familiar with the “provisional qualification” components of rule 2.893 and its related forms, there is also a lesser understood provision for the use of an interpreter for a single event only—when absolutely needed—using a different standard. The current structure of the rule does not sufficiently distinguish between these two statuses and therefore has created confusion.

Finally, there is concern that some noncertified and nonregistered interpreters use the provisional qualification process as a way to continue to work in the courts without ever attempting to become certified or registered. The existing rule text does not identify any incentive within the provisional qualification process that would encourage the interpreter to pursue certified or registered status, nor does it provide a procedure for doing so.

## **The Proposal**

The proposal is responsive to concerns or problems that have been raised by judges and courtroom personnel as well as interpreter stakeholders. It is also required to implement recent legislative changes.

### **1. Include all case types when provisionally qualifying interpreters**

As part of implementing the legislation expanding court interpreter services to civil case types, the Court Interpreters Advisory Panel is proposing that the provisional qualification of

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<sup>1</sup> Form INT-120, *Certification of Unavailability of a Certified or Registered Interpreter*, addresses the availability of certified or registered interpreters and the court’s search for one. Since this relates to court operations, the Court Executives Advisory Committee will be reviewing the form and updates to form INT-120 are not part of this proposal.

<sup>2</sup> The plan is available at [www.courts.ca.gov/documents/CLASP\\_report\\_060514.pdf](http://www.courts.ca.gov/documents/CLASP_report_060514.pdf).

interpreters in civil case types should follow the same rules and procedures, and be subject to the same standards, as provisional qualification in criminal and juvenile proceedings. Rule 2.893, form INT-100-INFO, and form INT-110 would be modified to clarify that all case types are considered in the provided guidelines. The rule would be revised to make clear that both noncertified and nonregistered interpreters are subject to the guidelines.

## **2. Implement changes required by Government Code section 68561**

As noted above, recent legislation amended Government Code Section 68561 to require specified findings be made on the record when an interpreter is used. This proposal would rename, modify, and restructure rule 2.893 to include these new requirements:

- Subdivision (c) adds requirements for stating details on the record for the use of certified and registered interpreters, including the language to be interpreted, the interpreter’s name, the interpreter’s certification or registration number, a statement that the interpreter’s identification has been verified, a statement that the interpreter is certified or registered to interpret in the language to be interpreted, and a statement that the interpreter was administered the interpreter’s oath or has an oath on file with the court.
- Subdivisions (d)(2)(D), (E), (F), and (G) add requirements for stating details on the record for the use of noncertified or nonregistered interpreters, including the name of the interpreter, that the interpreter is not certified or registered to interpret in the language to be interpreted, a finding that the interpreter is qualified to interpret in the proceeding as required under the provisional qualification or temporary-use guidelines, and a statement that the interpreter was administered the interpreter’s oath.

## **3. Better distinguish between “provisionally qualified” and “temporary use”**

The adoption of new form INT-140, *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter*, along with restructuring of rule 2.893 and form INT-100-INFO, will help to clarify the requirements and limitations of a temporary use of an interpreter by defining the various types of interpreters and separately addressing their use.

- The text of the rule has been restructured to more clearly distinguish between guidelines for provisional qualification and guidelines for temporary use. Two separate forms—one for the use of a provisionally qualified interpreter (INT-110) and another for the temporary use of an interpreter (INT-140)—make it much easier for court staff to know which process to follow. In addition, each form cross-references the other.
- The form INT-140 process for the temporary use of an interpreter may be handled quickly in the courtroom for a single-use event, while the form INT-110 process is more involved and requires sign-off by the presiding judge. The new form treats temporary use as a separate process.

#### **4. Encourage prospective interpreters to become certified or registered without making it impossible for courts to get interpreters in hard-to-find, other-than-Spanish languages**

The proposed changes to rule 2.893 and form INT-110 include modifications that will encourage noncertified or nonregistered interpreters to continue on the path toward certified or registered status and becoming more competent as a court interpreter while protecting the courts' ability to access interpreters in the most hard-to-find languages. Currently, interpreters are provisionally qualified for six-month periods, and the provisional qualification process is overseen by the presiding judge of the court. The current maximum periods are shorter for Spanish than for other languages, and nothing in this proposal changes any of the maximums or their exceptions.

- **Subdivision (f)(4).** While requirements for the first period of provisional qualification remain unchanged, the proposed amendments in this new subdivision include the following requirements for interpreters requesting their second six-month period of provisional qualification:
  - Must take the State of California Court Interpreter Written Exam at least once in the 12 calendar months leading up to their appointment for a second six-month period;
  - Must have taken the State of California's court interpreter ethics course for interpreters seeking appointment as a noncertified or nonregistered interpreter, or already be certified or registered in a different language from the one in which they are being appointed for a second six-month period; and
  - Must have taken the State of California's online court interpreter orientation course, or be certified or registered in a different language from the one in which they are being appointed.
- **Subdivision (f)(5).** The proposed amendments in this new subdivision include the following requirements for interpreters requesting their third or subsequent six-month period of provisional qualification:
  - Must have taken and passed the State of California Court Interpreter Written Exam; and
  - Must have taken either the Bilingual Interpreting Exam or the relevant Oral Proficiency Exam for their language pairing at least once during the 12 calendar months leading up to the appointment.

While the committee believes these changes may increase the number of interpreters who seek certified or registered status, instead of remaining long-term provisionally qualified interpreters, they remain very aware of court concerns about accessing interpreters in hard-to-find languages. Interpreters in very rare or hard-to-find languages will not be required to meet these additional requirements.

- **Subdivision (f)(7)** accordingly assures that interpreters in languages with fewer than 25 people on the Judicial Council's master list of certified and registered interpreters (Master List) will not be subject to these new requirements. (For example, the requirements would

currently apply to Spanish, Mandarin, Korean, French, Farsi, Vietnamese, and Russian interpreters, but would not apply to interpreters in hard-to-find languages.)

- **Subdivision (f)(6)** includes further protections to the supply of needed interpreters by carving out requirements related to taking the oral exams and by making clear that subdivision (f)(5)(b) will not apply to any interpreter who seeks appointment in a language pairing for which no exam is available. For example, this would currently apply to the Japanese-to-English pairing or to someone seeking appointment as a Spanish-to-indigenous language interpreter.

Please note that, because the proposed changes to rule 2.893 and form INT-100-INFO are so extensive, these changes are not shown with underlining, strikeouts, and shading. Instead, the committee is proposing repealing/revoking the existing rule and form and replacing them with the substantially modified versions attached to this invitation to comment.

## **5. Make Other Changes to form INT-110**

Other proposed changes to form INT – 110 include:

- The introduction section establishes whether or not the interpreter works in a language, or language pairing, for which there is no testing.
- Questions 2, 4(b) & (c), 6(b) & (c) help the court better assess an interpreter's preparations for court interpreting by looking at interpreter or translator credentials which the interpreter might hold and the time the interpreter has spent observing court, in legal training, working as an interpreter, or under the guidance of a certified or registered court interpreter mentor.
- Question 6(a) specifies additional types of proceedings or events in which the interpreter may have worked during the previous six months.

## **Alternatives Considered**

Several alternatives were considered, as outlined below.

### **Establishing different provisional qualification standards for case types outside of criminal and juvenile**

The committee considered whether a different provisional qualification standard would be appropriate outside of the criminal and juvenile case types. In consideration of the Language Access Plan, which specifically recommended the same level of qualification for different case types (Recommendation 8), and because no compelling arguments to support different qualification standards were raised, the committee decided to modify the process to cover all case types.

### **Not clarifying the use of temporary interpreters**

- The committee considered not making changes to rule 2.893 regarding the use of temporary interpreters. However, the committee believes the existing rule text creates significant confusion as to the applicability of form INT-110 when an interpreter is not going to be

provisionally qualified. In the end, the committee determined that the proposed changes to the rule would provide the greatest clarity.

- The committee considered making changes to the rule without creating the new form INT-140, which is specifically about one-time, temporary interpreters. The committee also considered modifying form INT-110 to have two sections: one related to provisional qualification and one related to temporary interpreters. After reviewing mockups of a split INT-110, the committee determined that the greatest clarity is provided by the current proposal for two separate forms.

**Not exempting interpreters who are provisionally qualified, *OR*  
Exempting interpreters when a number other than 25 are registered or certified in a language**

- The committee discussed applying the same requirements for the second and subsequent six-month provisional qualification periods to all interpreters regardless of language. There were concerns that courts would then face insurmountable barriers to providing language access in certain rarely used languages. Applying the same requirements for testing, orientation classes, and ethics courses to all interpreters—even those working in languages with very few interpreting resources—would likely create hardships for courts, especially smaller and more remote courts. The committee decided to create exemptions for such situations.
- In determining how best to balance court interests in accessing interpreters in hard-to-find languages with encouraging interpreters to pursue certified and registered status, the committee considered both higher and lower thresholds for the exemption. Based on the 25 interpreter minimum, the committee reviewed which languages would currently be subject to the second and third or subsequent six-month-period requirements for provisional qualification and decided 25 was the best cutoff point. With 25 as the cutoff, interpreters in very rare or hard-to-find languages would not be required to meet the additional requirements.
- Prospective interpreters in languages with 25 or more interpreters on the Master List already have more preparation resources available to them, including training opportunities, the possibility of seeking out a mentor, and additional on-the-job or volunteer experience.
- Articulating the various types of triggers for provisional qualification may encourage all prospective interpreters to pursue certified or registered status. The detailed requirements in updated form INT-110 create a clear roadmap for the types of preparation that can have the greatest potential to assist interpreters in passing the qualifying exams for certified and registered status.

**Lengthening or shortening the provisional qualification periods**

In considering likely court concerns about how this revised process might discourage interpreters from working in the courts, the committee considered lengthening the six-month periods of provisional qualification. In the end, the committee chose to stay with the existing six-month

periods and believes that the exemption to meeting the new requirements in subdivision (f)(7) of the rule will create sufficient safeguards for the courts.

### **Requiring a database of provisionally qualified interpreters**

As the committee considered the possible impacts of multiple requirements spread over multiple six-month periods of provisional qualification, they discussed the idea of creating a database that could aid in tracking provisional qualification status. While the committee believed such a database might be useful, it did not feel that centralized tracking was required and was concerned about delaying the needed changes to the rule and to forms INT-100-INFO and INT-110. The committee believed that the period-tracking questions and the signature under penalty of perjury elements on form INT-110 would be sufficient to ensure courts were accessing interpreters in a manner consistent with the updated rule.

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

No significant costs are anticipated if the proposal is implemented. While new form INT-140 and changes to rule 2.893 and form INT-110 may necessitate some training, the training is not believed to be extensive or difficult to implement. Further, the changes clarifying the use of a temporary interpreter versus a provisionally qualified interpreter would make existing protocols more self-explanatory.

## 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 four stated purposes?
- Does it also appropriately address the stated purpose of encouraging interpreters to pursue certified or registered status without making it unduly difficult for courts to get interpreters in hard-to-find, other-than-Spanish languages?
- Does the length of the individual provisional qualification periods seem too short, too long, or just right?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- 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 3.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- Would a database of provisionally qualified interpreters available only to the courts (and not outside stakeholders who also use California's certified and registered interpreters) be useful to your court? (Note: Such a database may be developed in the future, but is not a part of this proposal.)
- How well would this proposal work in courts of different sizes?

### Attachments and Links

1. Cal. Rules of Court, rule 2.893, at pages 9–16
2. Form INT-100-INFO, at pages 17–18
3. Form INT-110, at pages 19–24
4. Form INT-140, at pages 25–26

Rule 2.893 of the California Rules of Court would be repealed and adopted, effective January 1, 2018, to read:

1 **Rule 2.893. Appointment of interpreters in court proceedings**

2  
3 **(a) Application**

4  
5 This rule applies to all trial court proceedings in which the court appoints an  
6 interpreter for a Limited English Proficient (LEP) person. This rule applies to  
7 spoken language interpreters in languages designated and not designated by the  
8 Judicial Council.

9  
10 **(b) Definitions**

11 As used in this rule:

- 12  
13  
14 (1) “Designated language” means a language selected by the Judicial Council for  
15 the development of a certification program under Government Code section  
16 68562;
- 17  
18 (2) “Certified interpreter” means an interpreter who is certified by the Judicial  
19 Council to interpret a language designated by the Judicial Council under  
20 Government Code section 68560 et seq;
- 21  
22 (3) “Registered interpreter” means an interpreter in a language not designated by  
23 the Judicial Council, who is qualified by the court under the qualification  
24 procedures and guidelines adopted by the Judicial Council, and who has  
25 passed a minimum of an English fluency examination offered by a testing  
26 entity approved by the Judicial Council under Government Code section  
27 68560 et seq.;
- 28  
29 (4) “Noncertified interpreter” means an interpreter who is not certified by the  
30 Judicial Council to interpret a language designated by the Judicial Council  
31 under Government Code section 68560 et seq.;
- 32  
33 (5) “Nonregistered interpreter” means an interpreter in a language not designated  
34 by the Judicial Council who has not been qualified under the qualification  
35 procedures and guidelines adopted by the Judicial Council under Government  
36 Code section 68560 et seq.;
- 37  
38 (6) “Provisionally qualified” means an interpreter who is neither certified nor  
39 registered but has been qualified under the good cause and qualification  
40 procedures and guidelines adopted by the Judicial Council under Government  
41 Code section 68560 et seq.;
- 42

1           (7) “Temporary interpreter” means an interpreter who is not certified, registered,  
2           or provisionally qualified, but is used one time, in a brief, routine matter.

3  
4           **(c) Appointment of certified or registered interpreters**

5  
6           If a court appoints a certified or registered court interpreter, the judge in the  
7           proceeding must require the following to be stated on the record:

- 8  
9           (1) The language to be interpreted;  
10  
11          (2) The name of the interpreter;  
12  
13          (3) The interpreter’s current certification or registration number;  
14  
15          (4) A statement that the interpreter’s identification has been verified as required  
16          by statute;  
17  
18          (5) A statement that the interpreter is certified or registered to interpret in the  
19          language to be interpreted; and  
20  
21          (6) A statement that the interpreter was administered the interpreter’s oath or that  
22          he or she has an oath on file with the court.

23  
24          **(d) Appointment or use of noncertified or nonregistered interpreters**

25  
26          (1) *When permissible*  
27          If after a diligent search a certified or registered interpreter is not available,  
28          the judge in the proceeding may either appoint a noncertified or nonregistered  
29          interpreter who has been provisionally qualified under (d)(3) or, in the  
30          limited circumstances specified in (d)(4), may use a noncertified or  
31          nonregistered interpreter who is not provisionally qualified.

32  
33          (2) *Required record*

34          In all cases in which a noncertified or nonregistered interpreter is appointed  
35          or used, the judge in the proceeding must require the following to be stated  
36          on the record:

37  
38          (A) The language to be interpreted;

39  
40          (B) A finding that a certified or registered interpreter is not available and a  
41          statement regarding whether a *Certification of Unavailability of*  
42          *Certified or Registered Interpreter* (form INT-120) for the language to  
43          be interpreted is on file for this date with the court administrator;

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- (C) A finding that good cause exists to appoint a noncertified or nonregistered interpreter;
- (D) The name of the interpreter;
- (E) A statement that the interpreter is not certified or registered to interpret in the language to be interpreted;
- (F) A finding that the interpreter is qualified to interpret in the proceeding as required in (d)(3) or (d)(4); and
- (G) A statement that the interpreter was administered the interpreter’s oath.

(3) Provisional qualification

- (A) A noncertified or nonregistered interpreter is provisionally qualified if the presiding judge of the court or other judicial officer designated by the presiding judge:
  - (i) Finds the noncertified or nonregistered interpreter to be provisionally qualified following the *Procedures and Guidelines to Appoint a Noncertified or Nonregistered Interpreter as Either Provisionally Qualified or Temporary* (form INT-100-INFO); and
  - (ii) Signs an order allowing the interpreter to be considered for appointment on *Qualifications of a Noncertified or Nonregistered Interpreter* (form INT-110). The period covered by this order may not exceed a maximum of six months.
- (B) To appoint a provisionally qualified interpreter, in addition to the matters that must be stated on the record under (d)(2), the judge in the proceeding must find on the record:
  - (i) That the interpreter is qualified to interpret the proceeding, following procedures adopted by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120); and
  - (ii) If applicable, that good cause exists under (f)(1)(B) for the court to appoint the interpreter beyond the time ordinarily allowed in (f);

1 (4) Temporary use  
2 A noncertified or nonregistered interpreter who is not provisionally qualified  
3 under (d)(3) may be temporarily used in a brief, routine matter if:  
4

5 (A) At the request of an LEP person, the judge in the proceeding finds on  
6 the record that:

7  
8 (i) The LEP person has been informed and has waived the  
9 appointment of a certified or registered interpreter or an  
10 interpreter who could be provisionally qualified by the  
11 presiding judge as provided in (d)(3);

12  
13 (ii) Good cause exists to appoint an interpreter who is not certified,  
14 registered, or provisionally qualified; and

15  
16 (iii) The interpreter is qualified to interpret that proceeding,  
17 following procedures adopted by the Judicial Council (see  
18 forms INT-100-INFO and INT-140).

19  
20 (B) The use of an interpreter under this subdivision is limited to a single  
21 brief, routine matter before the court. The use of the interpreter in this  
22 circumstance may not be extended to subsequent proceedings without  
23 again following the procedure set forth in this subdivision.

24  
25 (5) If a party objects to the appointment of the proposed interpreter or waives the  
26 appointment of a certified or registered interpreter, that objection or waiver  
27 must be made on the record.

28  
29 (e) **Appointment of intermediary interpreters working between two languages**  
30 **that do not include English**

31  
32 An interpreter who works as an intermediary between two languages that do not  
33 include English (a relay interpreter) is not eligible to become certified or registered.  
34 However, a relay interpreter can become provisionally qualified if the judge finds  
35 that he or she is qualified to interpret the proceeding following procedures adopted  
36 by the Judicial Council (see forms INT-100-INFO, INT-110, and INT-120). The  
37 limitations in (f) below do not apply to relay interpreters.  
38

1 **(f) Limit on appointment of provisionally qualified noncertified and**  
2 **nonregistered interpreters**

- 3
- 4 (1) A noncertified or nonregistered interpreter who is provisionally qualified  
5 under (d)(3) may not interpret in any trial court for more than any four  
6 six-month periods, except in the following circumstances:
- 7
- 8 (A) A noncertified interpreter of Spanish may be allowed to interpret for no  
9 more than any two six-month periods in counties with a population  
10 greater than 80,000.
- 11
- 12 (B) A noncertified or nonregistered interpreter may be allowed to interpret  
13 more than any four six-month periods, or any two six-month periods  
14 for an interpreter of Spanish under (f)(1)(A), if the judge in the  
15 proceeding makes a specific finding on the record in each case in which  
16 the interpreter is sworn that good cause exists to appoint the interpreter,  
17 notwithstanding the interpreter’s failure to achieve Judicial Council  
18 certification.
- 19
- 20 (2) Except as provided in (f)(3), each six-month period under (f)(1) begins on the  
21 date a presiding judge signs an order under (d)(3)(A)(ii) allowing the  
22 noncertified or nonregistered interpreter to be considered for appointment.
- 23
- 24 (3) If an interpreter is provisionally qualified under (d)(3) in more than one court  
25 at the same time, each six-month period runs concurrently for purposes of  
26 determining the maximum periods allowed in this subdivision.
- 27
- 28 (4) Beginning with the second six-month period under (f)(1), a noncertified or  
29 nonregistered interpreter may be appointed if he or she meets all of the  
30 following conditions:
- 31
- 32 (A) The interpreter has taken the State of California Court Interpreter  
33 Written Exam at least once during the 12 calendar months before the  
34 appointment;
- 35
- 36 (B) The interpreter has taken the State of California’s court interpreter  
37 ethics course for interpreters seeking appointment as a noncertified or  
38 nonregistered interpreter, or is certified or registered in a different  
39 language from the one in which he or she is being appointed; and  
40  
41

1 (C) The interpreter has taken the State of California’s online court  
2 interpreter orientation course, or is certified or registered in a different  
3 language from the one in which he or she is being appointed.  
4

5 (5) Beginning with the third six-month period under (f)(1), a noncertified or  
6 nonregistered interpreter may be appointed if he or she meets all of the  
7 following conditions:  
8

9 (A) The interpreter has taken and passed the State of California Court  
10 Interpreter Written Exam with such timing that he or she is eligible to  
11 take a Bilingual Interpreting Exam; and  
12

13 (B) The interpreter has taken either the Bilingual Interpreting Exam or the  
14 relevant Oral Proficiency Exam(s) for his or her language pairing at  
15 least once during the 12 calendar months before the appointment.  
16

17 (6) The restrictions in (f)(5)(B) do not apply to any interpreter who seeks  
18 appointment in a language pairing for which no exam is available.  
19

20 (7) The restrictions in (f)(4) and (5) may be waived by the presiding judge for  
21 good cause whenever there are fewer than 25 certified or registered  
22 interpreters enrolled on the Judicial Council’s statewide roster for the  
23 language requiring interpretation.  
24

25 **Advisory Committee Comment**  
26

27 **Subdivisions (c) and (d)(2).** When a court reporter is transcribing the proceedings, or an  
28 electronic recording is being made of the proceedings, a judge may satisfy the “on the record”  
29 requirement by stating the required details of the interpreter appointment in open court. If there is  
30 no court reporter and no electronic recording is being made, the “on the record” requirement may  
31 be satisfied by stating the required details of the interpreter appointment and documenting them in  
32 writing—such as in a minute order, the official clerk’s minutes, a formal order, or even a  
33 handwritten document—that is entered in the case file.

1 **Rule 2.893. Appointment of noncertified interpreters in criminal cases and juvenile**  
2 **delinquency proceedings**

3 ~~(a) Application~~

4 This rule applies to trial court proceedings in criminal cases and juvenile delinquency  
5 proceedings under Welfare and Institutions Code section 602 et seq. in which the  
6 court determines that an interpreter is required.

7 ~~(b) Appointment of noncertified interpreters~~

8 An interpreter who is not certified by the Judicial Council to interpret a language  
9 designated by the Judicial Council under Government Code section 68560 et seq. may  
10 be appointed under Government Code section 68561(e) in a proceeding if:

11 ~~(1) Noncertified interpreter provisionally qualified~~

12 ~~(A) The presiding judge of the court, or other judicial officer designated by the~~  
13 ~~presiding judge:~~

14 ~~(i) Finds the noncertified interpreter to be provisionally qualified~~  
15 ~~following the *Procedures and Guidelines to Appoint a Noncertified*~~  
16 ~~*Interpreter in Criminal and Juvenile Delinquency Proceedings*~~  
17 ~~*(Designated Languages)* (form IN-100); and~~

18 ~~(ii) Signs an order allowing the interpreter to be considered for~~  
19 ~~appointment on *Qualifications of a Noncertified Interpreter* (form IN-~~  
20 ~~110); and~~

21 ~~(B) The judge in the proceeding finds on the record that:~~

22 ~~(i) Good cause exists to appoint the noncertified interpreter; and~~

23 ~~(ii) The interpreter is qualified to interpret the proceeding, following~~  
24 ~~procedures adopted by the Judicial Council (see forms IN-100, IN-110,~~  
25 ~~and IN-120).~~

26 ~~(C) Each order of the presiding judge under (b)(1) finding a noncertified~~  
27 ~~interpreter to be provisionally qualified and allowing the interpreter to be~~  
28 ~~considered for appointment in a proceeding is for a six-month period.~~

29 ~~(2) Noncertified interpreter not provisionally qualified~~

30 ~~(A) To prevent burdensome delay or in other unusual circumstances, at the~~  
31 ~~request of the defendant, or of the minor in a juvenile delinquency~~  
32 ~~proceeding, the judge in the proceeding may appoint a noncertified~~

1 ~~interpreter who is not provisionally qualified under (b)(1) to interpret a~~  
2 ~~brief, routine matter provided the judge, on the record:~~

3 ~~(i) Indicates that the defendant or minor has waived the appointment of a~~  
4 ~~certified interpreter and the appointment of an interpreter found~~  
5 ~~provisionally qualified by the presiding judge;~~

6 ~~(ii) Finds that good cause exists to appoint an interpreter who is neither~~  
7 ~~certified nor provisionally qualified; and~~

8 ~~(iii) Finds that the interpreter is qualified to interpret that proceeding.~~

9 ~~(B) The findings and appointment under (b)(2)(A) made by the judge in the~~  
10 ~~proceeding are effective only in that proceeding. The appointment must not~~  
11 ~~be extended to subsequent proceedings without an additional waiver,~~  
12 ~~findings, and appointment.~~

## PROCEDURES TO APPOINT A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER PROVISIONALLY QUALIFIED OR TEMPORARY

The court is required to appoint a certified or registered interpreter. If a certified or registered interpreters is not available, the court may **provisionally qualify** (Cal. Rules of Court, rule 2.893(d)(3)) or **temporarily use** an interpreter (Cal. Rules of Court, rule 2.893(d)(4)). *These procedures include different instructions for provisional qualification and temporary use.*

### How does the court appoint a potential noncertified or nonregistered interpreter?

- The court must determine if a certified or registered interpreter is expected to be available by reviewing and completing a *Certification of Unavailability of Certified or Registered Interpreter* (form INT-120). Form INT-120 must be completed, signed, and filed on the day of the proceeding.
- The court must also determine if a noncertified or nonregistered interpreter is being temporarily used per rule 2.893(b)(7) and (d)(4) or if the interpreter needs to be provisionally qualified or is already provisionally qualified.

### What is the process for provisionally qualifying an interpreter?

- To provisionally qualify an interpreter, the presiding judge or judicial designee must review the declaration on *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) and sign the six-month Finding of Provisional Qualification and Order of the Presiding Judge.
- Requirements to provisionally qualify an interpreter are different during the first six-month period and subsequent six-month periods. The presiding judge or judicial designee should be careful to review whether the proposed interpreter has met those requirements under rule 2.893(f).

### What is the process for temporary use of an interpreter?

- After the interpreter has completed and signed the Temporary Interpreter Declaration on *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-140), the judge must review and sign the Finding of Qualification for a Single Proceeding.
- The judge's finding must include that the Limited English Proficient (LEP) person has waived the appointment of a certified or registered interpreter.
- Form INT-140 is intended for a single, brief appearance before the court and may not be extended to subsequent proceedings without completing a new form INT-140.

### What are the record-keeping requirements when using a noncertified or nonregistered interpreter?

- There are specific requirements as to **who** must make findings on the record and **what** details must be included whenever a noncertified or nonregistered interpreter is used. To learn more about these requirements in each situation, review rule 2.893(d)(2) and (d)(4)(A) of the California Rules of Court.
- File the completed *Certification of Unavailability of Certified or Registered Interpreter* (form INT-120) with the court on the day of the proceeding.
- Process the completed *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) in accordance with the court's record-keeping procedures.
- Retain the completed *Temporary Use of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-140) in the case file.

**PROCEDURES TO APPOINT A NONCERTIFIED OR  
NONREGISTERED SPOKEN LANGUAGE INTERPRETER AS EITHER  
PROVISIONALLY QUALIFIED OR TEMPORARY**

**What does an interpreter need to do to become provisionally qualified?**

- Complete and sign under oath the *Qualifications of a Noncertified or Nonregistered Spoken Language Interpreter* (form INT-110) and submit it to the court.
- Renew the declaration in form INT-110 after the first six months *if* the interpreter remains uncertified or unregistered and provisionally qualified.
- If seeking provisional qualification in additional six-month periods, the interpreter must take the written court interpreter exam, required ethics courses and/or relevant bilingual interpreting or oral proficiency exams. These requirements are detailed in rule 2.893 of the California Rules of Court.

QUALIFICATIONS OF A NONCERTIFIED OR NONREGISTERED SPOKEN LANGUAGE INTERPRETER

INT-110

INTERPRETER NAME:
LANGUAGE:
[ ] Original filing in this court
Mark which 6-month period applies to this interpreter: 1st 2nd 3+
[ ] Within the period allowed by Cal. Rules of Court, rule 2.893
[ ] Beyond the period allowed by Cal. Rules of Court, rule 2.893
NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT (IF ANY):
FOR COURT USE ONLY (FILE WITH THE COURT ADMINISTRATOR)
DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL

This form is used to appoint a PROVISIONALLY QUALIFIED interpreter for a 6-month period under rule 2.893(d)(4). If you are using a temporary interpreter in a single brief appearance only, use form INT-140.

Interpreter's name: Phone (home):
Address: Phone (work):
Language: Driver's license: State:
OR State I.D.: State:

Please mark all that apply:

- [ ] Designated language: noncertified interpreter
[ ] Nondesignated language: nonregistered interpreter
[ ] Provisionally qualifying for a 6-month period
[ ] Language with no certified or registered status available, either not working from English to another language (relay interpreter) or no certified exam available in the language pairing

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the interpreter should be considered by the court to determine whether the interpreter is appointed to interpret the stated language.

1. Previous provisional qualification periods (since January 1996)

- a. Since January 1, 1996, have you been provisionally qualified by a presiding judge in this court or any other court under Cal. Rules of Court, rule 2.893?
[ ] No
[ ] Yes. For each period state (see p. 5):
Beginning date: Court:
Beginning date: Court:
Beginning date: Court:
Beginning date: Court:
b. Since January 1, 1996, have you interpreted in any court without being provisionally qualified?
[ ] No [ ] Yes (explain, giving court names and dates):

2. Interpreter and translator credentials

Please list the two most relevant interpreter or translator credentials you currently hold, and which are in good standing (e.g., court interpreter certification from another state, in another language, or for the federal courts; ATA certification; community college certificate; etc.):

Credential name: ID #:
Language pair: Date of initial credential:
Credential name: ID #:
Language pair: Date of initial credential:

INTERPRETER (name):	COURT NAME:
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**3. Interpreter examinations and evaluations (related to credentials you do not currently hold)**

a. Have you taken the State of California Bilingual Interpreting Exam (BIE) or the Oral Proficiency Exam in English (OPE) and/or in the other language to be interpreted? (list all exams, date taken, and results)

None taken

Yes (fill in below):

Exam/language: (date): What were the results?

b. Have you taken the Federal Court Interpreter Certification Examination?

Yes (dates): What were the results?

No (check one):  Not taken  Not given in the language specified above

c. Have you taken a Court Interpreter Certification Examination from other states?

Yes (dates): Give states and results of each:

No (check one):  Not taken  Not given in the language specified above

d. Have your interpreting skills been evaluated in any other way?  Yes  No

If yes, which aspects of your skills were evaluated? (check all that apply):

Interpreting modes:

Consecutive  Simultaneous  Sight translation

Other (specify):

What languages?

When were you evaluated?

What were the results?

Which authority evaluated your skills?

**4. Interpreting and translation training**

a. Institutions attended:

Year:

Year:

Year:

b. Court interpreting observation (please indicate number of hours you have observed court interpreters in the courtroom setting):

c. Legal/court interpreting training (select one):

(1)  40 or more hours of training in legal interpreting in the last 2 years

(2)  80 or more hours of training in legal interpreting in the last 4 years

(3)  Less legal training than either (1) or (2) during the identified time period

**5. Teaching experience**

Do you have any language teaching experience?  Yes  No

If yes, which languages?

At what levels?

INTERPRETER (name):	COURT NAME:
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**6. Interpreting experience**

- a. Have you interpreted in any court or administrative proceedings?  Yes  No  
 Please mark how many proceedings or events you have interpreted in the last 6 months for each type:
- |          |              |                   |                         |
|----------|--------------|-------------------|-------------------------|
| Criminal | Traffic      | Juvenile          | Family                  |
| Civil    | Small Claims | Unlawful Detainer | Probate/Conservatorship |
- Dates (if known): List the last two counties you have worked in:
- What languages?
- Which modes of interpreting did you employ? (check all that apply):
- Consecutive     Simultaneous     Sight translation

- b. Have you interpreted in any noncourt setting?  Yes  No  
 Please list, (medical, business, education, community, other):  
 Number of events interpreted in the last 6 months:  
 Is your role as an interpreter compensated?  Yes  No  
 Approximate number of total days:  
 What languages?  
 Which modes of interpreting did you employ? (check all that apply):
- Consecutive     Simultaneous     Sight translation

- c. Have you had 72 hours of legal interpreting experience with, or under the guidance of, a certified or registered court interpreter mentor (includes police interpreted work, depositions, etc., as well as mock trials and other court training simulations)?  Yes  No

**7. Translation**

- a. Do you have any experience in written translation?  Yes  No  
 b. List types of documents:  
 c. What languages?

**8. Code of professional conduct/ethics**

- a. Have you had any training in professional ethics for court interpreters?  Yes  No  
 Please explain:
- b. Have you taken the State of California's court interpreter ethics course for interpreters seeking provisional qualification?  Yes (date):  No  
 (Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)
- c. Do you have a copy of the Standards of Professional Conduct for Court Interpreters?  Yes  No  
 d. Have you read and do you understand the Standards of Professional Conduct for Court Interpreters?  Yes  No

**9. Training in legal terminology**

What training have you received in California legal terminology as required by Government Code section 68564?

<b>INTERPRETER (name):</b>	<b>COURT NAME:</b>
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**10. Orientation to court interpreting**

a. Have you received training in criminal procedure?  Yes  No

Please describe:

b. Have you received training in civil procedure?  Yes  No

Please describe:

c. Have you taken the Judicial Council's online court interpreter orientation course?  Yes (date):  No

(Required after the first 6-month period of provisional qualification unless you are certified or registered in a different language.)

**11. General education**

Highest level degree attained:

High school  Jr. college  University  Graduate degree  Postgraduate

Name of institution:

Degree awarded: Year: Major:

Degree awarded: Year: Major:

**12. Language training**

a. How did you learn English? (mark N/A if not interpreting in English)

b. How did you learn the language to be interpreted?

c. In which languages were you educated?

Language (specify):	Elementary	Jr. high	High school	University
(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. What languages  are  were spoken at home (specify):

**13. Disqualifications, decertifications, or criminal offenses**

a. Have you had any certifications that have lapsed or have you been disqualified from interpreting in any court or administrative hearing?  Yes  No

Please provide detail:

b. What is your relationship to the party?  Acquainted  Related  Do not know party

Please explain or provide detail:

c. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? (Do not include traffic infractions.)  Yes  No

If yes, please explain:

INTERPRETER (name):	COURT NAME:
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**INTERPRETER'S DECLARATION**

Once an interpreter is provisionally qualified in one court, the relevant 6-month period applies to all courts. Please complete this declaration based on the timing of your provisional qualification status in any California trial court.

(Check all that apply)

1.  I am unable to become certified or registered because there are no exams in my language pairing.
2.  I am 18 years of age or older.
3.  I have **never** been provisionally qualified or appointed to interpret in any trial court under California Rules of Court, rule 2.893.
4.  I have been provisionally qualified in a different court, and I am currently in my first 6-month period of provisional qualification with any California trial court.
5.  I am in my second or subsequent 6-month period of provisional qualification, and I have met the specific testing and course requirements required under rule 2.893(f)(4) or (5).
6.  **Noncertified interpreters only**

I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

- a.  I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893).
  - (1) Two 6-month periods for noncertified Spanish interpreters in counties with a population greater than 80,000
  - (2) Four 6-month periods for noncertified Spanish interpreters in counties with a population less than 80,000
  - (3) Four 6-month periods for noncertified interpreters of designated languages other than Spanish
- b.  I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

7.  **Nonregistered interpreters only**

I have been provisionally qualified or appointed to interpret in the trial courts under California Rules of Court, rule 2.893, AND

- a.  I have **not** exceeded any of the provisional qualification periods stated below (see Cal. Rules of Court, rule 2.893):
  - (1) Four 6-month periods for nonregistered interpreters.
- b.  I have exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.

I declare under penalty of perjury under the laws of the State of California that the information provided above and on the preceding pages is true and correct. I understand that any false or misleading statements disqualify me from being considered for interpreting assignments in the trial courts, in addition to other penalties provided by law.

Date:

\_\_\_\_\_

(TYPE OR PRINT NAME)



\_\_\_\_\_

(SIGNATURE OF PROSPECTIVE INTERPRETER)

INTERPRETER (name):	COURT NAME:
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**PROVISIONAL QUALIFICATION and ORDER OF THE PRESIDING JUDGE**

(Gov. Code, §§ 68561(c) & (d), 68564(d) & (e), and 71802(b)(1) & (d))

1. **Interpreter (name):** \_\_\_\_\_ **Case Number:** \_\_\_\_\_
2. **Language:** \_\_\_\_\_ **Date of Proceeding:** \_\_\_\_\_
3. **Finding:** For six months from the date of this order, the above-named interpreter is found to be provisionally qualified to be considered for appointment to interpret the language specified in any proceeding in this court, and
- a.  has not exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893.
  - b.  has exceeded the provisional qualification periods specified in California Rules of Court, rule 2.893, but good cause exists under rule 2.893 to continue appointing the interpreter.
  - c.  is in their second or greater 6-month provisional qualification period and has met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5).
  - d.  is in their second or greater 6-month provisional qualification period and has not met any applicable testing or course requirements as specified in California Rules of Court, rule 2.893(f)(4) or (5), but good cause exists under rule 2.893 to continue appointing the interpreter.
4. THE COURT ORDERS that the above-named interpreter may be considered for appointment by any judge of this court to interpret the specified language in any proceeding for which the judge in the proceeding finds the interpreter to be qualified. **This order expires six months from the date of signature.**

Date:

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

\_\_\_\_\_  
 PRESIDING JUDGE       DESIGNATED JUDICIAL OFFICER

TEMPORARY USE OF A NONCERTIFIED OR NONREGISTERED  
SPOKEN LANGUAGE INTERPRETER

INT-140

<b>INTERPRETER NAME:</b> <b>LANGUAGE:</b> <input type="checkbox"/> Original filing in this court <b>Case number:</b> <b>Date of proceeding:</b>	<i>FOR COURT USE ONLY (FILE WITH THE COURT ADMINISTRATOR)</i>
NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT (IF ANY):	<b>DRAFT: NOT APPROVED BY THE JUDICIAL COUNCIL</b>
This form is used to establish the qualifications of a TEMPORARY INTERPRETER for the proceeding listed below. Temporary interpreters under Cal. Rules of Court, rule 2.893(d)(4) may be used in brief appearances such as to set a continued hearing date. <b>To appoint a provisionally qualified interpreter for a 6-month period, use form INT-110.</b>	

Interpreter's name: Phone (home):  
Address: Phone (work):  
Driver's license.: State:  
Language: **OR** State I.D.: State:

The following questions may be addressed to the noncertified or nonregistered interpreter as voir dire, or the court may have the prospective interpreter answer the questions in writing on this form. All of the information provided by the temporary interpreter should be considered by the court to determine whether the interpreter may be used to interpret the stated language in the proceeding above.

**1. General education**

Highest level degree attained:  
 High school  Jr. college  University  Graduate degree  Postgraduate  
Name of institution:  
Degree awarded: Year: Major:  
Degree awarded: Year: Major:

**2. Language training**

- a. How did you learn English? (mark N/A if not interpreting in English):
- b. How did you learn the language to be interpreted?
- c. In which languages were you educated?

Language (specify):	Elementary	Jr. high	High school	University
(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- d. What languages  are  were spoken at home (specify):

INTERPRETER (name):	COURT NAME:
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**3. Disqualifications, decertifications, or criminal offenses**

a. Have you had any certifications that have lapsed or have you been disqualified from interpreting in any court or administrative hearing?  Yes  No

Please provide detail:

b. What is your relationship to the party?  Acquainted  Related  Do not know party

Please explain or provide detail:

c. Have you ever been convicted of violating any federal law, state law, county or municipal law, regulation, or ordinance? (Do not include traffic infractions.)  Yes  No

If yes, please explain:

**TEMPORARY INTERPRETER DECLARATION**

**I am 18 years of age or older and 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 PROSPECTIVE INTERPRETER)
----------------------	--	--

**FINDING OF QUALIFICATION FOR A SINGLE PROCEEDING  
(Cal. Rules of Court, rule 2.893(d)(4))**

- 1. **Interpreter (name):** \_\_\_\_\_ **Case Number:** \_\_\_\_\_
- 2. **Language:** \_\_\_\_\_ **Date of Proceeding:** \_\_\_\_\_
- 3. **Finding: Under Cal. Rules of Court, 2.893(d)(4), good cause exists to use** the above-named temporary interpreter, who is found to be qualified to interpret THE PROCEEDING LISTED ABOVE and not for a 6-month period.

Additionally, the judge has indicated on the record that **the limited English proficient (LEP) person has waived the appointment of a certified, registered, or provisionally qualified interpreter.**

4. THE COURT ORDERS that the above-named individual may be used to interpret the specified language for which the judge in the proceeding finds the temporary interpreter to be qualified. **This order expires at the conclusion of the listed proceeding.**

Date:

(TYPE OR PRINT NAME)		<input type="checkbox"/> JUDGE OF THE SUPERIOR COURT
----------------------	--	--

## RUPRO ACTION REQUEST FORM

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

**RUPRO Meeting:** February 24, 2017

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

Add Rule 2.850: Language Access Representative, and Rule 2.851: Language access services complaints

*Committee or other entity submitting the proposal:*

Language Access Plan Implementation Task Force

*Staff contact (name, phone and e-mail):* Douglas G. Denton, 415-865-7870, [douglas.denton@jud.ca.gov](mailto:douglas.denton@jud.ca.gov)

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

Approved by RUPRO: In July 2016, the model complaint packet (model form and procedures) was shared with the Rules and Projects Committee as an informational item, including the Task Force's intention to develop corresponding rule(s) of court.

Project description from annual agenda: Language Access Plan Implementation Task Force 2016 Annual Agenda Project #3: Develop and complete a statewide complaint form and process, including interaction with local trial court complaint processes.

*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.)

Pursuant to the Judicial Council's Strategic Plan for Language Access in the California Courts (Language Access Plan or LAP) Recommendation No. 25, each court will designate a Language Access Representative who serves as the court's language access resource for all court users, as well as court staff and judicial officers. As of January 2016, each of the superior courts has designated a Language Access Representative. The new rule will clarify that this is an ongoing responsibility for courts. Pursuant to LAP Recommendations Nos. 62 and 63, an additional rule will make clear that all courts must adopt a language access services complaint form and complaint procedures. Individual courts may choose to continue to use their existing language access complaint form and procedures, or model their new complaint form and/or procedures after the new rule and model form and recommended procedures that were developed by the Task Force. The new rules requiring all superior courts to designate a Language Access Representative and adopt a language access services complaint form and related procedures are designed to achieve consistent practices across the state.

# 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

SPR17-\_\_

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Title	Action Requested
Language Access: Designation of Representative and Handling Complaints	Review and submit comments by April 28, 2017
Proposed Rule	Proposed Effective Date
Adopt Cal. Rules of Court, rules 2.850 and 2.851	January 1, 2018
Proposed by	Contact
Language Access Plan Implementation Task Force	Douglas G. Denton 415-865-7870 <a href="mailto:douglas.denton@jud.ca.gov">douglas.denton@jud.ca.gov</a>
Hon. Mariano-Florentino Cuéllar, Chair	
Hon. Manuel J. Covarrubias, Vice-chair	

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### Executive Summary and Origin

To implement Recommendations 25, 62, and 63 in the *Strategic Plan for Language Access in the California Courts*, adopted by the Judicial Council in January 2015, the Language Access Plan (LAP) Implementation Task Force proposes two new California Rules of Court to require each superior court to (1) designate a Language Access Representative, and (2) adopt a language access services complaint form and complaint procedures.

### Background

The Judicial Council charged the Task Force with overseeing and ensuring implementation of the *Strategic Plan for Language Access in the California Courts* (LAP). The plan provides a comprehensive and systematic approach to expand language access in the California courts.

The LAP embraces the principle that it is the court's responsibility to provide language access throughout the continuum of court services, from the first time an individual tries to access the court's website, or walks in the door of the courthouse, to posthearing events necessary to comply with court orders (LAP, p. 45). To help achieve this goal, the LAP recommends that each county designate an office or person that serves as the court's Language Access Representative:

*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.*

25. The court in each county will designate an office or person that serves as a language access resource for all court users, as well as court staff and judicial officers. This person or persons should be able to: describe all the services the court provides and what services it does not provide, access and disseminate all of the court's multilingual written information as requested, and help LEP court users and court staff locate court language access resources.

In conjunction with LAP implementation, each of the 58 superior courts designated a Language Access Representative in January 2016.

The LAP also notes that a multifaceted complaint procedure is essential to ensure the quality of language access services delivered. The LAP states:

All participants in the court system, including LEP court users, attorneys, legal services providers, community-based organizations, interpreters, judicial officers, and other justice partners, must be able to register complaints if a court fails to provide adequate language access services, or if the services provided are of poor quality, whether the service involves bilingual staff, written translation, or interpreter employees or contractors. Any complaint procedure must be available to all, consistent and transparent, with procedures and forms, and should be utilized in a way that protects LEP court users or other interested persons from actual or perceived negative repercussions either to them personally or to the outcome of their case. (LAP, pp. 75–76)

To address the need to develop a complaint form and procedure, the LAP contains the following recommendations regarding development of statewide and local LAP-related complaint processes:

62. The Implementation Task Force will develop a single form, available statewide, on which to register a complaint about the provision of, or the failure to provide, language access. This form should be as simple, streamlined, and user-friendly as possible. The form will be available in both hard copy at the courthouse and online, and will be capable of being completed electronically or downloaded for printing and completion in writing. The complaints will also serve as a mechanism to monitor concerns related to language access at the local or statewide level. The form should be used as part of multiple processes identified in the following recommendations of this plan.

63. Individual courts will develop a process by which LEP court users, their advocates and attorneys, or other interested persons may file a complaint about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. Local courts may choose to model their local procedures after those developed as part of the

implementation process. Complaints must be filed with the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.

As an initial step in implementing these recommendations, at its July 6, 2016, meeting, the Task Force approved a model complaint form, recommended procedures, and other materials in a packet for the superior courts. In September 2016, the packet was distributed to the 58 superior courts and posted to the Language Access Toolkit (a link to the toolkit is provided below). Subsequently, the Task Force worked to develop the new rule of court that is contained in this proposal.

### **The Proposal**

The Task Force is proposing two new California Rules of Court to implement LAP recommendations 25, 62, and 63.

#### **Rule 2.850**

Proposed new rule 2.850 is intended to implement LAP Recommendation 25. This new rule would require each superior court to designate a Language Access Representative that serves as the court's language access resource for all court users, as well as court staff and judicial officers. As of January 2016, each court has already identified a Language Access Representative, so this rule will not impose new responsibilities on the courts. It will, however, make clear that this is an ongoing requirement for courts.

#### **Rule 2.851**

Proposed new rule 2.851 is intended to implement LAP Recommendations 62 and 63. This new rule would require each superior court to adopt a language access services complaint form and related procedures for the Language Access Representative to respond to complaints. This rule will benefit the judicial branch, justice partners, attorneys, self-represented litigants, and others by (1) ensuring that LEP court users who may not have received a court interpreter will, as appropriate and needed, receive a court interpreter; and (2) by alerting the court of any other language access services that may need to be provided or improved upon, or issues that need to be remedied.

The complaint form required by the rule will allow limited-English-proficient (LEP) court users, their advocates and attorneys, or other interested persons, to submit a complaint to the court's Language Access Representative about the court's provision of, or failure to provide, appropriate language access services, including issues related to locally produced translations. The rule will also establish minimum required procedures for courts to receive and respond to complaints, and clarify that complaints must be submitted to the court at issue and reported to the Judicial Council to assist in the ongoing monitoring of the overall implementation and success of the Language Access Plan.

Under this rule, individual courts may choose to continue to use their existing language access complaint form and procedures, or model their new complaint form and/or procedures after the rule and model form and recommended procedures that were developed by the Task Force.

### **Alternatives Considered**

No alternatives were considered. The proposed rules are intended to support implementation of the Judicial Council's *Strategic Plan for Language Access in the California Courts* (LAP Recommendations 25, 62, and 63). The new rules requiring all superior courts to designate a Language Access Representative and adopt a language access services complaint form and related procedures are designed to achieve consistent practices across the state.

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

Proposed rule 2.850 is not expected to impose any new costs or to have any operational impacts. As of January 2016, each of the superior courts has already designated a Language Access Representative. The new rule simply makes clear that this is an ongoing requirement for courts.

Proposed rule 2.851 should have minimal implementation requirements, costs, and operational impacts on the courts. The LAP Implementation Task Force has developed a model complaint form and court user instructions, which we have shared with all 58 superior courts. The Judicial Council will turn the existing model complaint form and court user instructions into a fillable PDF that is usable by any court, and will translate the model form and court user instructions into at least eight languages for courts to use as appropriate in order to address the specific language needs of their county. The Task Force will share these documents with courts for posting on their websites. Depending on the nature of any language access complaints, courts may need to make appropriate operational changes to ensure that LEP court users receive appropriate language access services. There will also be some implementation requirements, costs, and operational impacts associated with the required semiannual reporting to the Judicial Council on any complaints received.

## 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:

- What would be the implementation requirements be for courts? For example, costs, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), or modifying case management systems.
- Would three and a half 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 2.850 and 2.851, at pages 6–9
2. Attachment A: *Strategic Plan for Language Access in the California Courts*, [http://www.courts.ca.gov/documents/CLASP\\_report\\_060514.pdf](http://www.courts.ca.gov/documents/CLASP_report_060514.pdf)
3. Attachment B: Language Access Toolkit, <http://www.courts.ca.gov/lap-toolkit-courts.htm>
4. Attachment C: Model Complaint Form and Procedures, <http://www.courts.ca.gov/documents/lap-Model-Procedures-and-Complaint-Form.pdf>

Rules 2.850 and 2.851 of the California Rules of Court would be adopted, effective January 1, 2018, to read:

1 **Title 2. Trial Court Rules**

2  
3 **Chapter 4. Language Access**

4  
5 **Article 1. General Provisions**

6  
7 **Rule 2.850. Language Access Representative**

8  
9 **(a) Designation of Language Access Representative**

10  
11 The court in each county will designate a Language Access Representative. That  
12 function can be assigned to a specific job classification or office within the court.

13  
14 **(b) Duties**

15  
16 The Language Access Representative will:

- 17  
18 (1) Serve as the court’s language access resource for all court users, as well as  
19 court staff and judicial officers, and should be familiar with all the language  
20 access services the court provides;  
21  
22 (2) Access and disseminate all of the court’s multilingual written information as  
23 requested; and  
24  
25 (3) Help limited-English-proficient (LEP) court users and court staff locate  
26 language access resources.

27  
28 **Rule 2.851. Language access services complaints**

29  
30 **(a) Purpose**

31  
32 The purpose of this rule is to ensure that each superior court makes available a form  
33 on which court users may submit a complaint about the provision of, or the failure  
34 to provide, language access and that each court has procedures for handling those  
35 complaints.

36  
37 **(b) Complaint form and procedures required**

38  
39 Each superior court must adopt a language access services complaint form and  
40 complaint procedures that are consistent with this rule.

1 **(c) Minimum requirement for complaint form**

2  
3 The language access services complaint form adopted by the court must meet the  
4 following minimum requirements:

- 5  
6 (1) Be written in plain language;  
7  
8 (2) Allow court users to submit complaints about how the court provided or  
9 failed to provide language services;  
10  
11 (3) Allow court users to specify whether the complaint relates to court  
12 interpreters, other staff, or local translations;  
13  
14 (4) Include the court's mailing address and the contact information for the  
15 court's designated Language Access Representative;  
16  
17 (5) Be made available both in hard copy at the courthouse and online on the  
18 court's website, where court users can complete the form online and then  
19 submit it to the court by hand, postal mail, or e-mail; and  
20  
21 (6) Be made available in the languages spoken by significant proportions of the  
22 county population.

23  
24 **(d) General requirements for complaint procedures**

25  
26 The complaint procedures adopted by the court must provide for the following:

- 27  
28 (1) Submission and referral of local language access complaints  
29  
30 (A) Language access complaints may be submitted anonymously.  
31  
32 (B) Language access complaints regarding local court services should be  
33 submitted to the court's designated Language Access Representative.  
34  
35 (C) A complaint submitted to the improper entity must immediately be  
36 forwarded to the appropriate court, if that can be determined, or, where  
37 appropriate, to the Judicial Council.  
38  
39 (2) Acknowledgment of complaint  
40  
41 Except where the complaint is submitted anonymously, within 10 days after  
42 the complaint is submitted, the court's Language Access Representative must

1 send the complainant a written acknowledgment that the court has received  
2 the complaint.

3  
4 (3) *Preliminary review and disposition of complaints*

5  
6 Within 90 days, the court’s Language Access Representative should conduct  
7 a preliminary review of every complaint to determine whether the complaint  
8 can be informally resolved or closed, or whether the complaint warrants  
9 additional investigation. Court user complaints regarding denial of a court  
10 interpreter for pending cases should be addressed promptly.

11  
12 (4) *Procedure for complaints not resolved through the preliminary review*

13  
14 If a complaint cannot be resolved through the preliminary review process  
15 within 90 days, the court’s Language Access Representative should inform  
16 the complainant (if identified) that the complaint warrants additional review.

17  
18 (5) *Notice of outcome*

19  
20 Except where the complaint is submitted anonymously, the court must send  
21 the complainant notice of the outcome taken on the complaint.

22  
23 (6) *Disagreement with outcome*

24  
25 If a complainant disagrees with the outcome on his or her complaint, within  
26 90 days, he or she may submit a written follow-up statement to the Language  
27 Access Representative indicating that he or she disagrees with the outcome of  
28 the complaint. The follow-up statement should be brief, specify the basis of  
29 the disagreement, and describe the reasons the complainant believes the  
30 court’s action lacks merit. The court’s response to any follow-up statement  
31 submitted by the complainant after receipt of the notice of outcome will be  
32 the final action taken by the court on the complaint.

33  
34 (7) *Promptness*

35  
36 The court must process complaints promptly.

37  
38 (8) *Records of complaints*

39  
40 The court should maintain information about each complaint and its  
41 disposition. The court must report to the Judicial Council on a semiannual  
42 basis the number and kinds of complaints received, the resolution status of all  
43 complaints, and any additional information about complaints requested by

1                    Judicial Council staff to facilitate the monitoring of the *Strategic Plan for*  
2                    *Language Access in the California Courts.*

3  
4                    **Advisory Committee Comment**

5  
6                    **Subdivision (a).** Judicial Council staff have developed a model complaint form and model  
7                    local complaint procedures, which are available in the Language Access Toolkit at  
8                    [www.courts.ca.gov/33865.htm](http://www.courts.ca.gov/33865.htm). The model complaint form is posted in numerous languages.  
9                    Courts are encouraged to base their complaint form and procedures on these models.

10  
11                    **Subdivision (d)(1).** Court user complaints regarding language access that relate to Judicial  
12                    Council meetings, forms, or other translated material hosted on [www.courts.ca.gov](http://www.courts.ca.gov), should be  
13                    submitted directly to the Judicial Council at [www.courts.ca.gov/languageaccess.htm](http://www.courts.ca.gov/languageaccess.htm).  
14

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** February 24, 2017

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

Rules and Forms: Miscellaneous Technical Changes (Amend rule 1.100; revise forms CP10, DE-111, DE-142/DE-111(A-3d), FL-510, FL-570, FL-592, FL-676-INFO, MC-410, SC-100-INFO, and SC-104C; and renumber form FL-321-INFO as FL-323-INFO)

*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](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: N/A

Project description from annual agenda: N/A

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

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

**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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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on March 23–24, 2017

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Title	Agenda Item Type
Rules and Forms: Miscellaneous Technical Changes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend rule 1.100; revise forms CP10, DE-111, DE-142/DE-111(A-3d), FL-510, FL-570, FL-592, FL-676-INFO, MC-410, SC-100-INFO, and SC-104C; and renumber form FL-321-INFO as FL-323-INFO	July 1, 2017
Recommended by	Date of Report
Judicial Council staff	February 8, 2017
Susan R. McMullan, Senior Attorney	Contact
Legal Services	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

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### Executive Summary

Various Judicial Council advisory committees, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors, and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommends making the necessary corrections to avoid confusing court users, clerks, and judicial officers.

### Recommendation

Judicial Council staff recommends that the council, effective July 1, 2017:

1. Amend rule 1.100 and revise form MC-410 to conform to AB 1709 (Gallagher; ch. 94, 2016), which would remove the words “impairment” and “impaired” when describing a person with a disability. AB 1709 replaces the term “hearing impaired” with the term “hard of hearing,” or a close variation of “hard of hearing,” and would make additional technical,

non-substantive changes in sections 54.1 and 54.2 of the Civil Code, section 224 of the Code of Civil Procedure, and other statutes relating to deaf or hard-of-hearing individuals.

2. Revise form CP10, page 1, item 4, to read “(This date is in the accompanying Writ of Possession.)”
3. Revise *Petition for Probate* (form DE-111) and *Waiver of Bond by Heir or Beneficiary* (form DE-142/DE-111(A-3d)) to correct cross-references superseded by the recent addition of item 3b to form DE-111. The *Petition for Probate* was revised, effective January 1, 2017, to add item 3b regarding the decedent’s foreign citizenship. That addition required renumbering items 3b–3g as 3c–3h. In the revision process, one cross reference to renumbered item 3d in item 2d(1) on form DE-111 was overlooked. Several references to renumbered item 3d on the *Waiver of Bond by Heir or Beneficiary* were overlooked. Staff recommends revising both forms, effective July 1, 2017, to replace all references to renumbered item 3d with references to item 3e.
4. Renumber *Attorney for Child in a Family Law Case—Information Sheet* (form FL-321-INFO), which was approved, effective January 1, 2012, to provide information to parties about the appointment of an attorney for a minor child involved in a family law case. Effective July 1, 2012, the Judicial Council approved *Witness List* (form FL-321) for optional use. The numbering of these forms has caused some confusion to parties and court professionals since they believe form FL-321-INFO provides information about form FL-321. However, form FL-321-INFO is not related to the witness list. Because FL-321-INFO relates to the appointment of a minor’s counsel, the Family and Juvenile Law Advisory Committee recommends that the information sheet be renumbered to reflect its association with *Order Appointing Counsel for a Child* (form FL-323). Specifically, the committee recommends that form FL-321-INFO be renumbered to form FL-323-INFO and that all translated versions of form FL-321-INFO be revised to reflect this change.
5. Revise *Summons (UIFSA)* (form FL-510) to add a Spanish translation of “FOR COURT USE ONLY” to be consistent with other family law summons forms, to correct the misspelling of a Spanish word (“Desea”)—inadvertently spelled “Desia,”—and to replace the date and signature line for the clerk that was inadvertently removed from the form during the recent form change. Form FL-510 was revised, effective January 1, 2017, to comply with the modifications to the Uniform Interstate Family Support Act.
6. Revise *Notice of Registration of Out-of- State Support Order* (form FL-570) to replace “item 1” with “section 1” in item 3; to break the text regarding arrears in item 3 into two sentences with the checkbox placed before the second sentence for more clarity; and to change item 7 to replace “registration statement” in the first sentence with “Letter of Transmittal Requesting Registration” and to replace “registration statement” in the last sentence to “Personal Information Form.” These changes are being proposed at the request of counsel at the California Department of Child Support Services to comply with modifications to the

federal Uniform Interstate Family Support Act forms, which were made after this form's effective date, and for more clarity. Form FL-570 was revised, effective January 1, 2017, to comply with the modifications to the Uniform Interstate Family Support Act.

7. Revise *Notice of Registration of an International Hague Convention Support Order* (form FL-592) to break the text regarding arrears in item 3 into two sentences with the checkbox placed before the second sentence for more clarity. This change is being proposed at the request of counsel for the California Department of Child Support Services for more clarity. Form FL-592 was revised, effective January 1, 2017, to comply with the modifications to the Uniform Interstate Family Support Act.
8. Revise *Information Sheet: Request for Determination of Support Arrears or Adjustment of Child Support Arrears Due to Incarceration or Involuntary Institutionalization* (form FL-676-INFO) to correct the words "Other Parent/Parent" under the third paragraph in the section titled "Instructions for Completing Form FL-676" to "Other Parent/Party." Form FL-676-INFO was revised, effective January 1, 2017, to reflect the AB 610 changes in the process for adjusting arrears and to update and clarify instructions.
9. Revise *Information for the Small Claims Plaintiff* (form SC-100-INFO) and *How to Serve a Business or Public Entity (Small Claims)* (form SC-104C) to reflect changes in several reference web addresses.

Copies of the revised rule and forms are attached at pages 5-23.

### **Previous Council Action**

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

### **Rationale for Recommendation**

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

### **Comments, Alternatives Considered, and Policy Implications**

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

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

Operational impacts are expected to be minor. The proposed revisions may result in reproduction costs if courts provide hard copies of any of the forms recommended for revision. Because the proposed changes are technical corrections, case management systems are unlikely to need updating to implement them.

## **Attachments and Links**

1. Rule 1.100 at page 5
2. Forms CP10, DE-111, DE-142/DE-111(A-3e), FL-323-INFO, FL-510, FL-570, FL-592, FL-676-INFO, MC-410, SC-100-INFO, and SC-104C at pages 6–23

Rule 1.100 of the California Rules of Court is amended, effective July 1, 2017, to read:

1 **Rule 1.100. Requests for accommodations by persons with disabilities**

2  
3 **(a) Definitions**

4  
5 As used in this rule:

6  
7 (1) “Persons with disabilities” means individuals covered by California Civil  
8 Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42  
9 U.S.C. §12101 et seq.); or other applicable state and federal laws. This  
10 definition includes persons who have a physical or mental ~~impairment~~  
11 medical condition that limits one or more of the major life activities, have a  
12 record of such an ~~impairment~~ a condition, or are regarded as having such an  
13 ~~impairment~~ a condition.

14  
15 (2) \* \* \*

16  
17 (3) “Accommodations” means actions that result in court services, programs, or  
18 activities being readily accessible to and usable by persons with disabilities.  
19 Accommodations may include making reasonable modifications in policies,  
20 practices, and procedures; furnishing, at no charge, to persons with  
21 disabilities, auxiliary aids and services, equipment, devices, materials in  
22 alternative formats, readers, or certified interpreters for persons ~~with hearing~~  
23 ~~impairments~~ who are deaf or hard-of-hearing; relocating services or programs  
24 to accessible facilities; or providing services at alternative sites. Although not  
25 required where other actions are effective in providing access to court  
26 services, programs, or activities, alteration of existing facilities by the  
27 responsible entity may be an accommodation.

28  
29 **(b) \* \* \***

30  
31 **(c) Process for requesting accommodations**

32  
33 The process for requesting accommodations is as follows:

34  
35 (1) \* \* \*

36  
37 (2) Requests for accommodations must include a description of the  
38 accommodation sought, along with a statement of the ~~impairment~~ medical  
39 condition that necessitates the accommodation. The court, in its discretion,  
40 may require the applicant to provide additional information about the  
41 ~~impairment~~ medical condition.

42  
43 (3)–(4) \* \* \*

CLAIMANT OR CLAIMANT'S ATTORNEY ( <i>Name and Address</i> ):      TELEPHONE NO.:  ATTORNEY FOR ( <i>Name</i> ):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by the</b> <b>Judicial Council</b> <b>02.08.2017</b>
<b>NAME OF COURT:</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
Plaintiff: Defendant:	(For levying officer use only) Completed form was received on Date: _____ Time: _____ By: _____
<b>CLAIM OF RIGHT TO POSSESSION AND NOTICE OF HEARING</b>	
Complete this form only if ALL of these statements are true: 1. You are NOT named in the accompanying form called <i>Writ of Possession</i> . 2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed. ( <i>The date is in the accompanying Writ of Possession.</i> ) 3. You still occupy the premises. 4. A <i>Prejudgment Claim of Right to Possession</i> form was NOT served with the <i>Summons and Complaint</i> , OR this eviction results from a foreclosure.	
NOTICE: If you are being evicted because of foreclosure, you have additional rights and should seek legal assistance immediately.	

I DECLARE THE FOLLOWING UNDER PENALTY OF PERJURY:

1. My name is (*specify*):
2. I reside at (*street address, unit no., city and ZIP code*):
3. The address of "the premises" subject to this claim is (*address*):

Check here if this property was foreclosed on.

4. On (*insert date*): \_\_\_\_\_, the owner, landlord, or the landlord's authorized agent filed a complaint to recover possession of the premises. (*This date is in the accompanying Writ of Possession.*)
5. I occupied the premises on the date the complaint was filed (*the date in item 4*). I have continued to occupy the premises ever since.
6. I was at least 18 years of age on the date the complaint was filed (*the date in item 4*).
7. I claim a right to possession of the premises because I occupied the premises on the date the complaint was filed (*the date in item 4*).
8. I was not named in the *Writ of Possession*.
9. I understand that if I make this claim of possession, a court hearing will be held to decide whether my claim will be granted.
10. (*Filing fee*) To obtain a court hearing on my claim, I understand that after I present this form to the levying officer I must go to the court and pay a filing fee of \$ \_\_\_\_\_ or file with the court "*Application for Waiver of Court Fees and Costs*." I understand that if I don't pay the filing fee or file the form for waiver of court fees within 2 court days, the court will immediately deny my claim.
11. (*Immediate court hearing unless you deposit 15 days' rent*) To obtain a court hearing on my claim, I understand I must also present a copy of this completed complaint form or a receipt from the levying officer. I also understand the date of my hearing will be set immediately if I do not deliver to the court an amount equal to 15 days' rent.

(Continued on reverse)

Plaintiff: Defendant:	CASE NUMBER:
--------------------------	--------------

12. I am filing my claim in the following manner (check the box that shows how you are filing your claim. Note that you must deliver to the court a copy of the claim form or a levying officer's receipt):

- a.  I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court the following: (1) a copy of this completed claim form or a receipt, (2) the court filing fee or form for proceeding in forma pauperis, and (3) an amount equal to 15 days' rent; or
- b.  I presented this claim form to the sheriff, marshal, or other levying officer, AND within two court days I shall deliver to the court (1) a copy of this completed claim form or a receipt, and (2) the court filing fee or form for proceeding in forma pauperis.

**IMPORTANT: Do not take a copy of this claim form to the court unless you have first given the form to the sheriff, marshal, or other levying officer.**

Date of hearing: Address of court:	<i>(To be completed by the court)</i> Time:	Dept. or Div.:	Room:
---------------------------------------	--	----------------	-------

NOTICE: If you fail to appear at this hearing you will be evicted without further hearing.

13. **Rental agreement.** I have (check all that apply to you):

- a.  an oral rental agreement with the landlord.
- b.  a written rental agreement with the landlord.
- c.  an oral rental agreement with a person other than the landlord.
- d.  a written rental agreement with a person other than the landlord.
- e.  a rental agreement with the former owner who lost the property through foreclosure.
- f.  other (explain):

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

WARNING: Perjury is a felony punishable by imprisonment in the state prison.

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

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF CLAIMANT)

**NOTICE:** If your claim to possession is found to be valid, the unlawful detainer action against you will be determined at trial. At trial, you may be found liable for rent, costs, and, in some cases, treble damages.

**— NOTICE TO OCCUPANTS —**

**YOU MUST ACT AT ONCE if all the following are true:**

- 1. You are **NOT** named, in the accompanying form called **Writ of Possession**;
- 2. You occupied the premises on or before the date the unlawful detainer (eviction) action was filed; and
- 3. You still occupy the premises.
- 4. A **Prejudgment Claim of Right to Possession** form was **NOT** served with the **Summons and Complaint**, OR you are being evicted due to foreclosure.

**You can complete and SUBMIT THIS CLAIM FORM**

(1) Before the date of eviction at the sheriff's or marshal's office located at (address):

(2) OR at the premises at the time of the eviction. (Give this form to the officer who comes to evict you.)

If you do not complete and submit this form (and pay a filing fee or file the form for proceeding in forma pauperis if you cannot pay the fee), **YOU WILL BE EVICTED** along with the parties named in the writ.

After this form is properly filed, A **HEARING WILL BE HELD** to decide your claim. If you do not appear at the hearing, you will be evicted without a further hearing.

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</b> <b>Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (name): _____ DECEDENT	
<b>PETITION FOR</b> <input type="checkbox"/> <b>Probate of</b> <input type="checkbox"/> <b>Lost Will and for Letters Testamentary</b> <input type="checkbox"/> <b>Probate of</b> <input type="checkbox"/> <b>Lost Will and for Letters of Administration with Will Annexed</b> <input type="checkbox"/> <b>Letters of Administration</b> <input type="checkbox"/> <b>Letters of Special Administration</b> <input type="checkbox"/> <b>with general powers</b> <input type="checkbox"/> <b>Authorization to Administer Under the Independent Administration of Estates Act</b> <input type="checkbox"/> <b>with limited authority</b>	CASE NUMBER:  HEARING DATE AND TIME: _____ DEPT.: _____

1. Publication will be in (specify name of newspaper):

- a.  Publication requested.
- b.  Publication to be arranged.

2. **Petitioner** (name each):

**requests that**

- a.  decedent's will and codicils, if any, be admitted to probate.
- b. (name): \_\_\_\_\_ be appointed
  - (1)  executor
  - (2)  administrator with will annexed
  - (3)  administrator
  - (4)  special administrator  with general powers and Letters issue upon qualification.
- c.  full  limited authority be granted to administer under the Independent Administration of Estates Act.
- d. (1)  bond not be required for the reasons stated in item 3e.  
 (2)  \$ \_\_\_\_\_ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. (Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)  
 (3)  \$ \_\_\_\_\_ in deposits in a blocked account be allowed. Receipts will be filed. (Specify institution and location): \_\_\_\_\_

3. a. Decedent died on (date): \_\_\_\_\_ at (place): \_\_\_\_\_

- (1)  a resident of the county named above.
- (2)  a nonresident of California and left an estate in the county named above located at (specify location permitting publication in the newspaper named in item 1): \_\_\_\_\_

- b.  Decedent was a citizen of a country other than the United States (specify country): \_\_\_\_\_
- c. Street address, city, and county of decedent's residence at time of death (specify): \_\_\_\_\_

ESTATE OF (name):	CASE NUMBER:
DECEDENT	

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.)  
 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. (Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 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) \*

\* (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)

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

▶ \_\_\_\_\_  
(SIGNATURE OF PETITIONER)

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</b> <b>Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (Name): _____, DECEDENT	
<b>WAIVER OF BOND BY HEIR OR BENEFICIARY</b> <input type="checkbox"/> Attachment 3e to Petition for Probate*	CASE NUMBER: _____

**NOTICE: READ PARAGRAPHS A–G BEFORE YOU SIGN**

- A. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor or administrator (the estate's **personal representative**). The cost of the bond is paid from the assets of the estate.
- B. A bond may not be required if the decedent's will admitted to probate waives a bond and the court approves.
- C. If the decedent's will does not waive bond, or if the decedent died without a will, the law ordinarily requires the personal representative to give a bond approved and ordered by the court. However, all persons eligible to receive a share of the estate may waive the requirement of a bond. If they all waive bond and the court approves, the personal representative will NOT have to give a bond.
- D. **If bond is not ordered by the court, and the estate suffers loss because the personal representative fails to properly perform the duties of the office, the loss or some part of it may not be recoverable from the personal representative. If so, your share of the estate may be partly or entirely lost.**
- E. You may waive the requirement of a bond by signing this form and delivering it to the petitioner for appointment of a personal representative or to the petitioner's attorney. Your waiver cannot be withdrawn after the court appoints the personal representative without requiring a bond. However, if you sign a waiver of bond, you may later petition the court to require a bond.
- F. A guardian ad litem or other legal representative with specific authority under law to waive bond must sign for a minor, an incapacitated person, an unascertained beneficiary, or a designated class of persons who are not ascertained or not yet in being. See Judicial Council forms DE-350 and DE-351 and Probate Code section 1003.
- G. **If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you.**

**WAIVER**

1. I have read and understand paragraphs A through G above.
2. I understand that before signing this form, I am free to consult with a lawyer of my choice concerning the possible consequences to me of waiving bond.
3. I understand that I do not have to waive bond to allow the estate administration to begin or proceed, or to receive my share of the estate.
4. I WAIVE the posting of bond in this estate by (name of personal representative): \_\_\_\_\_

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

(TYPE OR PRINT NAME OF BENEFICIARY (AND AUTHORIZED SIGNER, IF BENEFICIARY IS NOT AN INDIVIDUAL))	(SIGNATURE)
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**\*(This form may be filed as an independent form (as form DE-142) OR as Attachment 3e(2) (will) or Attachment 3e(3) (intestacy) to the Petition for Probate (form DE-111) (as form DE-111(A-3e).)**

## FL-323-INFO Attorney for Child in a Family Law Case—Information Sheet

In some cases, the family court judge will appoint a private attorney to represent a child in a custody or parenting time (visitation) case. These attorneys are often called “minor’s counsel.”

### Why might the court appoint an attorney for a child?

The court might appoint an attorney for a child for many different reasons. For example, if parents significantly disagree about issues of parenting time and a child is experiencing stress, the court might appoint an attorney to represent the child in the case.

### What will minor’s counsel do?

Minor’s counsel will:

- Gather and present evidence about the best interests of the child;
- If the child wants, present the child’s wishes to the court; and
- Inform the court if the child wants to address the court.

Generally, minor’s counsel will also:

- Interview the child; and
- Review court files and records available to the parties and make additional investigation.

Minor’s counsel:

- Cannot be called as a witness but can bring witnesses for the child’s case;
- Can see a child’s mental health, medical, dental, and other health-care records, and school and educational records;
- Has the right to interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child; and
- Must be served with all documents in the case once appointed.

### Who pays for minor's counsel?

In general, the parties pay for the attorney for their child, but sometimes the court will cover the cost

of minor’s counsel. The court must determine the reasonable amount for the attorney. The court must also decide about the ability of the parties to pay all or some of that amount. The court will review the parties’ financial information to make this decision. If the parties do not pay when they are required to, the attorney or the court could bring a case against them to collect the money. If the court finds that the parties are not able to pay all or some of the cost, the court must pay the part the parties can’t pay.

### Who can ask that minor’s counsel be appointed?

Parties and their attorneys, other types of attorneys, the child or a relative of the child, or a child custody mediator, recommending counselor, or evaluator may ask the court to appoint minor’s counsel for the child. The court may also decide to appoint minor’s counsel without a request.

### What will a court order for minor’s counsel include?

The court must make written orders when appointing and relieving counsel for a child.

Appointment orders must include the appointed counsel’s name, address, and telephone number; the name of the child for whom counsel is appointed; and the child’s date of birth.

Orders might also include:

- The child’s address, if appropriate;
- Issues to be addressed in the case;
- Case-related tasks that would benefit from the services of counsel for the child;
- Responsibilities and rights of the child’s counsel;
- Counsel’s rate or amount of compensation;
- Allocation of fees payable by each party or the court;
- Source of funds and manner of reimbursement for costs and attorney fees;
- Allocation of payment of attorney fees to one party subject to reimbursement by the other party;
- The terms and amount of any progress or installment payments; and



- The ability of the court to change the order on fees and payment.

**When does the minor’s counsel stop representing the child?**

Generally, the attorney keeps representing the child until the court decides otherwise or when the child turns 18 years.

**Does the court have a list of attorneys who might be appointed?**

The court may or may not maintain a list or panel of attorneys meeting the minimum qualifications to be appointed. The court may also appoint attorneys not on a list and may take into consideration factors including language, culture, and the special needs of the child.

**What do I do if I have a complaint about minor's counsel?**

Look in the court’s local rules or ask the court about its complaint procedures.

**What kind of qualifications must attorneys have to be appointed?**

An attorney must:

- Be an active member in good standing of the State Bar of California;
- Have professional liability insurance or demonstrate to the court that he or she is adequately self-insured;
- Have completed at least 12 hours of education and training on specific topics (see California Rules of Court, rule 5.242); and
- Have a certain amount of experience before being appointed and also receive at least 8 hours of additional training each year.

**How does the attorney tell the court he or she is qualified?**

The attorney must file a declaration with the court indicating compliance with all requirements no later than 10 days after being appointed and before beginning work on the case.

**SUMMONS**

**NOTICE AND WARNING TO RESPONDENT:  
 AVISO Y ADVERTENCIA AL ACUSADO O A LA ACUSADA:**

CASE NUMBER (Número del Caso):

**FOR COURT USE ONLY  
 (SOLO PARA USO DE LA CORTE)**

**DRAFT**  
 Not approved by the  
 Judicial Council

<p><b>IF YOU WANT LEGAL ADVICE, CONTACT A LAWYER IMMEDIATELY.</b></p>	<p><b>SI DESEA CONSEJOS LEGALES, CONSULTE A UN ABOGADO DE INMEDIATO.</b></p>
<p><b>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.</b></p> <p><b>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.</b></p> <p><b>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:</b></p>	<p><b>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).</b></p> <p><b>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.</b></p> <p><b>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:</b></p>

- 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.*
- 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):*

[SEAL]

- 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.*
- File the response with the court at the following address:  
*Presente el formulario de respuesta ante la corte en la siguiente dirección:*

Date (Fecha): \_\_\_\_\_ Clerk, by (Secretario, por) \_\_\_\_\_, Deputy (Asistente)

<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</b> <b>Judicial Council</b>
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<b>NOTICE OF REGISTRATION OF OUT-OF-STATE SUPPORT ORDER</b> <input type="checkbox"/> <b>Support Order</b> <input type="checkbox"/> <b>Income Withholding Order</b>	CASE NUMBER:

1. To (name):
2. 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 Letter of Transmittal Requesting Registration are attached.
3. The amount of arrears is specified in section 1 on the attached Letter of Transmittal Requesting Registration.  
 The amount of the alleged arrears is: \_\_\_\_\_ as of \_\_\_\_\_  
 The arrears have a U.S. dollar equivalence of \_\_\_\_\_ as of \_\_\_\_\_
4. The registered order is enforceable in the same manner as a support order made by a California court as of the date that the Letter of Transmittal Requesting Registration is filed.
5. If you want to contest the validity or enforcement of the registered order, you must request a hearing within 20 days after notice. You can request a hearing by completing and filing a *Request for Hearing Regarding Registration of Support Order* (form FL-575).
6. If you fail to contest the validity or enforcement of the attached order within 20 days after notice, the order will be confirmed by the court and you will be unable to contest any portion of the order including the amount of arrears as specified in item 1 of the Letter of Transmittal Requesting Registration.

**CLERK'S CERTIFICATE OF MAILING**

7. 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 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 Personal Information Form, sealed, and deposited with the U.S. Postal Service  
  
 at (place):  
 on (date):
  8. A copy was sent to the local child support agency 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</b> <b>Judicial Council</b>
PETITIONER/PLAINTIFF:  RESPONDENT/DEFENDANT:	
<b>NOTICE OF REGISTRATION OF AN INTERNATIONAL                  HAGUE CONVENTION SUPPORT ORDER</b>	CASE NUMBER:

1. To *(name)*:
2. You are notified that an International Hague 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
3. The amount of arrears is specified in item 1 on the attached Transmittal Form under Article 12(2).  
 The amount of the alleged arrears is: \_\_\_\_\_ as of \_\_\_\_\_  
 The arrears have a U.S. dollar equivalence of \_\_\_\_\_ as of \_\_\_\_\_
4. 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.
5. If you want to contest the validity or enforcement of the registered order, you must request a hearing within 30 days if you reside in 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 an International Hague Convention Support Order* (form FL-594).
6. If you fail to contest the validity or enforcement of the attached order within 30 days, or 60 days if residing outside the United States, of the date this notice was mailed, the order will be confirmed by the court and you will be unable 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**

7. I certify that I am not a party to this cause and that a copy of the Transmittal Form with a copy of the International Hague 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 Transmittal Form, sealed, and deposited with the U.S. Postal Service  
  
 at *(place)*:  
 on *(date)*:
8. Copy sent to local child support agency on *(date)*:

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

**INFORMATION SHEET: 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 past due support payments (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 amounts for child care costs related to employment, or training needed 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.

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/Party 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/Party, 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.
3. Check the box if you do not agree with the local child support agency's statement of past due support payments (arrears) and want the court to make a final determination.
- 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. **Check if this applies.** 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/Party 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.**



## INFORMATION FOR THE SMALL CLAIMS PLAINTIFF

SC-100-INFO

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.
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.sos.ca.gov/business](http://www.sos.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 serve papers 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 court clerk as soon as possible if your court has a court-provided interpreter available and how to request one. A court-provided interpreter may not be available. Alternatively, you may bring an adult who is not a witness or an attorney 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*):

# SC-104C How to Serve a Business or Public Entity (Small Claims)

You must serve the *right* person and write the *exact* name of the business and the person to be served. Use this form to make sure you serve correctly, and follow the instructions on *Proof of Service*, form SC-104.

Business Type:	Sole Proprietorship (Only 1 owner)	Partnership	Landlord	Corporation, Association	Limited Liability Company (LLC), Limited Liability Partnership (LLP), Limited Partnership (LP)	Unknown Business Type
<b>Serve:</b>	The owner	If you are suing a <b>partnership</b> , serve one of the partners.  If you are suing a <b>partnership and</b> the partners, serve each partner.	The property owner or manager ( <i>Read Civil Code sections 1962–1962.7.</i> )	Agent for service listed with Secretary of State or any corporate officer (president, vice-president, secretary, treasurer), chief executive officer (CEO), controller, chief financial officer, or general manager	Agent for service listed with Secretary of State  To serve a limited partnership, you can also serve the general partner.	Someone who seems to be in charge of the business during normal business hours
<b>Write on your Proof of Service form:</b>	<ul style="list-style-type: none"> <li>• Business name</li> <li>• Owner's name and job title</li> </ul>	<ul style="list-style-type: none"> <li>• Partnership name</li> <li>• Name of partner, general manager, or agent for service and job title</li> </ul>	<ul style="list-style-type: none"> <li>• Business name (if there is one)</li> <li>• Owner's name and job title</li> </ul>	<ul style="list-style-type: none"> <li>• Corporation name</li> <li>• Name of corporate officer or agent for service and job title</li> </ul>	<ul style="list-style-type: none"> <li>• Company or partnership name</li> <li>• Name of agent or partner for service and job title</li> </ul>	<ul style="list-style-type: none"> <li>• Business name, form unknown</li> <li>• Owner's name and job title (<i>if you know it</i>)</li> </ul>
<b>Check that you have the exact names of the owner and business with:</b>	<ul style="list-style-type: none"> <li>• County Clerk–Recorder's or County Tax Assessor's Office (Ask to see the fictitious business name statement.) Your county's Web site may have this information. Check: <a href="http://www.csac.counties.org">www.csac.counties.org</a>.</li> <li>• City Clerk's Office (Ask to see the business license.) Your city's website may have this information.</li> </ul>	County Tax Collector	County Tax Collector	Search under Corporation, LP and LLC at the California Secretary of State website: <a href="http://businesssearch.sos.ca.gov/">businesssearch.sos.ca.gov/</a> Or call: <b>1-916-657-5448</b>  <b>OR</b> County Clerk–Recorder's Office: (Ask to see the fictitious business name statement.) Your county's website may have this information.  <b>OR</b> City Clerk's Office: (Ask to see the business license.) Your city's website may have this information.	Try the other resources listed on this page to see if they know more about the business's organization type, like corporation or sole proprietorship.	



### Need help?

For free help, contact your county's Small Claims Advisor:

[\[space for local info here\]](#)

Or, go to "County-Specific Court Information" at: [www.courts.ca.gov/selfhelp/smallclaims](http://www.courts.ca.gov/selfhelp/smallclaims)

# SC-104C How to Serve a Business or Public Entity (Small Claims)

You must serve the *right* person and write the *exact* name of the public agency and the person to be served. Use this form to make sure you serve correctly, and follow the instructions on *Proof of Service*, form SC-104.

	City, County, or Public Entity	State of California, State Agency	Federal Agency
<b>Serve:</b>	City or county clerk, chief officer or director of public agency, or agent authorized to accept service	Use this general address for service: Office of the Attorney General 1300 I Street Sacramento, CA 95814  <i>Exception:</i> if your claim involves California Department of Transportation (Caltrans), serve it at: California Department of Transportation 1120 N Street Sacramento, CA 95814	You cannot sue a <b>federal</b> agency in small claims court.
	<b>Important!</b> Before you sue, you must <b>first</b> file a claim with the public entity. Contact it and ask for the claim procedures.	<b>Note:</b> Before you sue, you must first file a claim with the state or the state agency. To file a claim, see: <a href="http://www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx">www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx</a> or call: <b>1-800-955-0045</b>	
<b>Write on your Proof of Service form:</b>	<ul style="list-style-type: none"> <li>Name of city, county, or public entity</li> <li>Name of city clerk, county clerk, chief officer, or agent for service and job title</li> </ul>	<ul style="list-style-type: none"> <li>Name of the agency you are suing</li> <li>Name of agent for service</li> </ul>	
<b>Check that you have the exact names of the owner and business with:</b>	Call the city or county clerk. See the government pages of your phone book.  Or search under the California Roster at the California Secretary of State website: <a href="http://www.sos.ca.gov/administration/california-roster/">www.sos.ca.gov/administration/california-roster/</a>	Call the agency to confirm the name and address for service. Use the State Directory: <b>1-800-807-6755</b> Or search: <a href="http://cold.ca.gov">cold.ca.gov</a> under "agency information"	



### Need help?

For free help, contact your county's Small Claims Advisor:

[\[space for local info here\]](#)

Or, go to "County-Specific Court Information" at: [www.courts.ca.gov/selfhelp/smallclaims](http://www.courts.ca.gov/selfhelp/smallclaims)

## RUPRO ACTION REQUEST FORM

**RUPRO action requested:**        **Submit to JC (without circulating for comment)**

**RUPRO Meeting:** February 24, 2017

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

Civil Practice and Procedure: Adjustment of Maximum Amount of Imputed Liability of Parent or Guardian for Tort of a Minor (amend Appendix B)

*Committee or other entity submitting the proposal:*

Judicial Council staff

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7694 [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: N/A

Project description from annual agenda: N/A

*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](http://www.courts.ca.gov)

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 23–24, 2017

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Title	Agenda Item Type
Civil Practice and Procedure: Adjustment of Maximum Amount of Imputed Liability of Parent or Guardian for Tort of a Minor	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, Appendix B	July 1, 2017
Recommended by	Date of Report
Deborah Brown, Chief Counsel	January 24, 2017
Christy Simons, Attorney	Contact
Legal Services Office	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

Judicial Council staff recommends that the Judicial Council amend Appendix B of the California Rules of Court to reflect the biannual adjustments to the dollar amounts of the maximum amount of liability of parents or guardians to be imputed for the torts of a minor under Civil Code section 1714.1 and direct that staff publish the adjusted amounts.

### Recommendation

Judicial Council staff recommends that the Judicial Council, effective July 1, 2017, amend Appendix B of California Rules of Court to adjust the maximum liability of the parent or guardian having custody and control of a minor for the willful misconduct of the minor, under Civil Code section 1714.1(a) or (b), from \$40,600 to \$42,100.

The text of amended Appendix B is attached at page 4.

## **Previous Council Action**

Since January 1, 1997, Civil Code section 1714.1(c) has required that the council compute an adjustment to the dollar amounts stated in subdivisions (a) and (b) of that code section every two years, based on the change in the California Consumer Price Index. By Circulating Order CO-97-07, the council authorized the Administrative Director to make those adjustments on an ongoing basis and to report that action to the council. The Administrative Director did so every odd-numbered year since that time until 2013, at which time the council itself approved the adjustment. The revised Appendix B has been published with the California Rules of Court each time.

## **Rationale for Recommendation**

Civil Code section 1714.1(a) and (b)<sup>1</sup> imputes liability for any act of willful misconduct of a minor that results in injury or death to another person, injury to the property of another, or the defacement of the property of another by paint, to the parent or guardian having custody and control of the minor. Both subdivisions state that the maximum liability of the parent or guardian shall not exceed \$25,000 for each tort of the minor, but note that the maximum amount is subject to subdivision (c). Subdivision (c) requires the Judicial Council to compute an adjustment to the maximum amount every two years to reflect increases in the cost of living, as indicated by the annual average of the California Consumer Price Index (CCPI), and to publish the adjusted maximum amounts of liability on or before July 1 of each odd-numbered year.

The formula<sup>2</sup> for determining each adjustment is published in Appendix B to the California Rules of Court, which gives the adjustments and calculations a permanent place for reference. Applying that formula and the annual average of the 2016 California Consumer Price Index of 255.303,<sup>3</sup> the adjusted liability limit as of July 1, 2017, should be \$42,100, as shown in the attached amended Appendix B.

This amendment to Appendix B will be published—as required by section 1714.1(c)—in the *California Official Reports*, as are all amendments to the California Rules of Court, and also published on the judicial branch website.

## **Comments, Alternatives Considered, and Policy Implications**

The proposed amendment of Appendix B is a technical amendment made in response to a statutory mandate, which has not been circulated for comment. See Cal. Rules of Court, rule 10.22(d)(2).

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<sup>1</sup> All further statutory references are to the Civil Code, unless otherwise indicated.

<sup>2</sup> A copy of the letter from the Department of Finance setting out the formula for the original adjustment, which has been followed since 1997, is attached at page 5.

<sup>3</sup> The California Consumer Price Index is published each year by the California Department of Industrial Relations. A copy of the most recent chart is at page 6.

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

There are no court costs or operational impacts associated with this amendment of Appendix B.

### **Attachments**

1. Proposed amended Appendix B, at page 4
2. Attachment A: April 21, 1997 letter from Department of Finance, at page 5
3. Attachment B: Consumer Price Index–California, 2015-2016, at page 6

Appendix B of the California Rules of Court is amended effective July 1, 2017, as follows:

**Appendix B**

**Liability Limits of a Parent or Guardian Having Custody and Control of a Minor for the Torts of a Minor (Civ. Code, § 1714.1)**

**Formula**

Pursuant to Civil Code section 1714.1, the joint and several liability limit of a parent or guardian having custody and control of a minor under subdivisions (a) and (b) for each tort of the minor shall be computed and adjusted as follows:

$$\text{Adjusted limit} = \left[ \frac{\text{Current CCPI} - \text{January 1, 1995, CCPI}}{\text{January 1, 1995, CCPI}} + 1 \right] \times \text{January 1, 1995, limit}$$

**Definition**

“CCPI” means the California Consumer Price Index, as established by the California Department of Industrial Relations.

**July 1, 2015~~7~~, calculation and adjustment**

The joint and several liability of a parent or guardian having custody and control of a minor under Civil Code section 1714.1, subdivision (a) or (b), effective July 1, 2015~~7~~, shall not exceed ~~\$40,600~~ \$42,100 for each tort.

The calculation is as follows:

$$\text{\$40,603.14} \text{ } \text{\$42,129.21} = \left[ \frac{246.055 - 255.303 - 151.5}{151.5} + 1 \right] \times \$25,000$$

Under section 1714.1, subdivision (c), the adjusted limit is rounded to the nearest hundred dollars, so the dollar amount of the adjusted limit is rounded to ~~\$40,600~~ \$42,100.



April 21, 1997

Ms. Cara Vonk  
Judicial Council of California  
Administrative Office of the Courts  
303 Second Street, South Tower  
San Francisco, CA 94107

Dear Ms. Vonk,

The updated number calculated in accordance with Civil Code section 1714.1 subdivision c is \$25,900.00. Proper escalation procedure divides the difference of the end-of-period number and the beginning-of-period number by the beginning-of-period number. Next add one and multiply by the original number in this case \$25,000.00.

The California Consumer Price Index (CCPI) formula is established by the Department of Industrial Relations (DIR). The Department of Finance, using the DIR formula for the CCPI, calculates the January 1, 1995 CCPI as 151.5, for January 1, 1996 (154.0), and for January 1, 1997 (157.1). The calculation rests on the assumption that the figure of \$25,000.00 originates January 1, 1995 as you stated in our conversation this morning.

$$25,925.00 = \left[ \frac{(157.1 - 151.5)}{151.5} + 1 \right] \times 25,000.00$$

Subdivision c requires the number to be rounded to the nearest one hundred dollars producing \$25,900.00. My phone number is (916) 322-2263 x2423; where I can be reached to answer to any questions. I have included CCPI data tables for purposes of documentation.

Sincerely

A handwritten signature in cursive script that reads "Jason Barnhart".

Jason Barnhart

<http://www.dir.ca.gov/OPRL>

CONSUMER PRICE INDEX - CALIFORNIA

Los Angeles-Riverside-Orange Co., San Francisco-Oakland-San Jose, San Diego  
United States City Average, 2015-2016

All Items  
1982 - 1984 = 100

Year & Month	All Urban Consumers					Urban Wage Earners and Clerical Workers				
	California <sup>a</sup>	Los Angeles <sup>b</sup> Riverside Orange Co.	San Francisco <sup>b</sup> Oakland San Jose	San Diego <sup>b</sup>	U.S. City <sup>b</sup> Average	California <sup>a</sup>	Los Angeles <sup>b</sup> Riverside Orange Co.	San Francisco <sup>b</sup> Oakland San Jose	San Diego <sup>b</sup>	U.S. City <sup>b</sup> Average
<b>2015</b> January	-	239.724	b		233.707	-	231.063	b		228.294
February	246.218	241.297	254.910		234.722	237.836	232.975	249.809		229.421
March	-	243.738	b		236.119	-	235.991	b		231.055
April	248.637	243.569	257.622		236.599	240.661	235.697	252.875		231.520
May	-	246.093	b		237.805	-	238.816	b		232.908
June	250.404	245.459	259.117	267.346	238.638	242.680	237.792	254.736	251.472	233.804
July	-	247.066	b		238.654	-	239.889	b		233.806
August	251.253	246.328	259.917		238.316	243.753	238.755	256.060		233.366
September	-	245.431	b		237.945	-	237.324	b		232.661
October	251.255	245.812	261.019		237.838	242.884	237.472	256.107		232.373
November	-	245.711	b		237.336	-	237.190	b		231.721
December	250.711	245.357	260.289	271.526	236.525	242.222	236.787	255.492	255.060	230.791
Annual Average	249.666	244.632	258.572	269.436	237.017	241.635	236.646	253.910	253.266	231.810
<b>2016</b> January	-	247.155	b		236.916	-	238.609	b		231.061
February	252.649	247.113	262.600		237.111	243.748	238.262	257.141		230.972
March	-	247.873	b		238.132	-	239.146	b		232.209
April	254.134	248.368	264.565		239.261	245.321	239.536	259.386		233.438
May		R/249.554	b		R/240.229		R/240.320	b		R/234.436
June	R/255.576	R/249.789	266.041	272.628	R/241.018	R/246.505	R/240.522	261.017	256.287	R/235.289
July		R/249.784	b		R/240.628		R/240.580	b		R/234.771
August	R/256.097	R/249.700	R/267.853		R/240.849	R/246.735	R/240.267	R/262.326		R/234.904
September	-	250.145	b		241.428	-	240.851	b		235.495
October	257.836	251.098	270.306		241.729	248.408	241.932	264.026		235.732
November	-	250.185	b		241.353	-	240.809	b		235.215
December	256.953	250.189	269.483	276.837	241.432	247.411	240.846	263.222	259.893	235.390
Annual Average	255.303	249.246	266.344	274.732	240.007	246.184	240.140	260.830	258.090	234.076

<sup>a</sup> Weighted average of the consumer price indexes for Los Angeles-Anaheim-Riverside and San Francisco-Oakland-San Jose. A conversion factor has been included for comparability of 1987 data with 1986 and prior years. Computed by the Department of Industrial Relations, Office of the Director - Research Unit from indexes issued by the U.S. Department of Labor.

<sup>b</sup> Source: U.S. Department of Labor, Bureau of Labor Statistics. Beginning with January 1998 data, indices for San Francisco-Oakland-San Jose will be published bi-monthly on even months only (February, April, June, etc.). Beginning with the January 2007 data, indices published by the Bureau of Labor Statistics will be rounded to three decimal places (see <http://www.bls.gov/cpi/cpithreedec.htm>). The California indices conform to this change.

R/ - Revised, See Explanation by the Bureau of Labor Statistics at <http://www.bls.gov/bls/errata/cpi-price-corrections-10182016.htm>