

INVITATIONS TO COMMENT

Proposals for Changes to Cal. Rules of Court and Judicial Council Forms

www.courts.ca.gov/policyadmin-invitationstocomment.htm

SPRING 2018

Deadline for comments: 5:00 p.m., Friday, June 8, 2018

Judicial Administration

Judicial Council: Change to Advisory Committee Membership Requirements

SPR18-01

(amend rule 10.64) The Trial Court Budget Advisory Committee proposes amending the rule that governs that committee to broaden its membership definition of “presiding judge.” Under the existing rule, only a current or immediate past presiding judge is eligible for membership. The proposal would redefine a “presiding judge” to mean a current presiding judge or one who has served within six years of the year of the appointment as a committee member. In addition, it would extend eligibility for reappointment to an existing presiding or past presiding judge member. Finally, it would limit the Judicial Council’s nonvoting members to the chief administrative officer and the director of Budget Services, thus removing the chief of staff and chief operating officer.

Jury Service: Permanent Medical Excuse *(adopt rule 2.1009)*

SPR18-40

The Advisory Committee on Providing Access and Fairness proposes new rule 2.1009 to establish a process for a person with a disability to request a permanent medical excuse from jury service in cases where the individual, with or without accommodations, including the provision of auxiliary aides or services, is incapable of performing jury service. Senator Jerry Hill (D-San Mateo) considered authoring a bill in this area last year but deferred introducing the legislation in order to give the Judicial Council the opportunity to address the issue through the adoption of a uniform rule of court.

Appellate

Appellate Procedure: Finality of Appellate Division Decisions *(amend rules 8.887, 8.888, 8.889, 8.935, 8.976, and 8.1005)* The Appellate Advisory Committee proposes amendments to several rules of court relating to the finality of appellate division decisions. The amendments are intended to ensure that parties have sufficient time after receiving notice of appellate division decisions to prepare and file applications for certification for transfer and petitions for rehearing before the time the appellate division loses jurisdiction. This proposal is in response to suggestions from the presiding judge of an appellate division and a member of this committee.

SPR18-03

Appellate Procedure and Family Law: Settled Statements in Unlimited Civil

SPR18-04

Cases *(approve forms APP-014A, APP-014-INFO, APP-020, APP-022, APP-025; revise forms APP-003, APP-010; revoke form APP-00 and replace with APP-001-INFO; revoke and replace form APP-014)* To facilitate use of the settled statement procedure in unlimited civil cases, the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee propose new forms and revisions to existing forms for litigants and courts to use in preparing and certifying settled statements. This proposal is based on comments received last year in response to the Appellate Advisory Committee’s invitation to comment on proposed changes to the settled statement rule and forms.

Appellate Procedure: Notice of Appeal and Record on Appeal in Appellate

SPR18-05

Division Cases (*revise forms APP-102, APP-110, CR-132, CR-134, and CR-142*)

The Appellate Advisory Committee proposes revising several of the Judicial Council forms for filing notices of appeal and notices designating the record on appeal in appellate division matters. The revisions are intended to provide more complete and accurate information, make corrections, and clarify various items. This proposal is based on suggestions from the Superior Court of Los Angeles County.

Appellate Procedure: Electronic Sealed and Confidential Records and Lodged Records in the Court of Appeal (*amend rules 8.45, 8.46, and 8.47*)

SPR18-06

As part of the Rules Modernization Project,¹ the Appellate Advisory Committee recommends amending the rules to establish procedures for handling sealed and confidential materials submitted electronically in the Court of Appeal. The proposed amendments encompass the court's return of lodged electronic records submitted in connection with a motion to seal.

Civil

Civil Forms: Gender Discrimination Notice Proposed Rules, Forms, Standards, or Statutes (*adopt form GDC-001*)

SPR18-07

Recent legislation requires the Judicial Council to adopt, no later than January 1, 2019, a written advisory notice to be used by a plaintiff's attorney with each demand letter or complaint alleging gender discrimination in pricing. The Civil and Small Claims Advisory Committee proposes adopting a new form to comply with the legislation. Assembly Bill 1615 (Stats. 2017, ch. 156) added the Small Business Gender Discrimination in Services Compliance Act to division 1 of the Civil Code. It defines a "gender discrimination in pricing services claim" as a civil claim based on an alleged price difference in similar services charged to a person because of the person's gender. Among its provisions is Civil Code section 55.62, which requires the Judicial Council to adopt a written advisory notice to be used by a plaintiff's attorney to comply with that statute's provisions, including the requirement that a notice accompany each demand letter or complaint. The text of the notice is set out in Civil Code section 55.62(c).

Civil Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer (*revise forms CIV-140 and CIV-141*)

SPR18-08

Recent legislation added to and amended the Code of Civil Procedure to require a meet-and-confer session before a party can file a motion to strike a pleading or a motion for judgment on the pleadings, and to provide for an automatic extension of time if the parties are unable to meet and confer within the time allowed. The Civil and Small Claims Advisory Committee proposes revising two optional forms, one to implement the meet-and-confer requirements and the other to be used to obtain an automatic 30-day extension of time to file a motion to strike a pleading or a motion for judgment on the pleadings when the parties were unable to meet before the due date of the motion.

Civil Practice and Procedure: Review of Denial of Request to Remove Name From Shared Gang Database (*amend rule 3.2300; revise form MC-1000*)

SPR18-09

Recent legislation amended statutes relating to criminal gang databases and the process that authorizes challenges to a law enforcement agency's inclusion of a person in a shared gang database. The Civil and Small Claims Advisory Committee proposes amending the rule of court and revising the Judicial Council form that address a petition for a superior court to review a law enforcement agency's denial of a request for removal from a shared gang database to reflect this legislation.

Civil Forms: Confidential Information Form Under Civil Code Section 1708.85

SPR18-10

(*revise form MC-125*) The committee proposes revising Confidential Information Form Under Civil Code Section 1708.85 (form MC-125) to reflect recent amendments to California Civil Code section 1708.85. The amendments provide that the Judicial Council adopt or revise rules or forms to reflect the new law as appropriate by January 1, 2019.

Judicial Council–Sponsored Legislation: Limited Civil Cases and Unlawful Detainers

SPR18-11

(*amend Code Civ. Proc., §§ 85, 86, 86.1, 91, 95, 96, 630.20, 630.28, 630.29, and 630.30; amend rule 3.1546*) This proposal from the Civil and Small Claims Advisory Committee would increase the jurisdictional amount of limited civil cases from \$25,000 to \$50,000 and would include unlawful detainer within that jurisdictional amount in all procedures applicable to limited civil cases, including mandatory expedited jury trials (EJTs). The proposal is based on the recommendations of the Commission on the Future of California's Court System (Futures Commission).

Criminal

Criminal Procedure: Multicounty Incarceration and Supervision

SPR18-12

(*amend rule 4.452*) Senate Bill 670 (Jackson; Stats. 2017, ch. 287) amended Penal Code section 1170(h), effective January 1, 2018, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. SB 670 also amended section 1170.3, requiring the Judicial Council to adopt rules of court providing criteria for the consideration of trial judges at the time of sentencing when determining the county or counties of incarceration and supervision. This proposal would implement section 1170.3 by amending California Rules of Court, rule 4.452 to guide the second or subsequent court when determining the county or counties of supervision.

Criminal Procedure: Petition for Writ of Habeas Corpus

SPR18-13

(*revise form HC-0011*) The Criminal Law Advisory Committee proposes revisions to the Judicial Council form used by non-capital petitioners to petition for a writ of habeas corpus. This proposal would update the instructions regarding filing in the Supreme Court and Court of Appeal to reflect amendments to the appellate rules; replace or add authority that is more recent or more on point for the propositions they support; add language relevant to successive petitions and repetitive claims in item 12 to include the court in which the petition is filed; and add citations as authority for the procedural bars of successiveness and repetitiveness. These changes are in response to a request from

members of the California Supreme Court's Central Criminal Staff.

Criminal Justice Realignment: Petition and Order for Dismissal *(revise forms CR-180 and CR-181)* The Criminal Law Advisory Committee proposes revisions to two Judicial Council forms in response to recent legislation that authorizes dismissal relief for defendants sentenced to state prison for a felony that, if committed after the 2011 Realignment legislation, would have been eligible for sentencing to a county jail under Penal Code section 1170(h)(5). The proposed revisions would incorporate the new statutory basis for relief on both forms. **SPR18-14**

Criminal Procedure: Petition and Order to Vacate Arrest or Conviction (Human Trafficking Victim) *(approve forms CR-407 and CR-408)* The Criminal Law Advisory Committee proposes two new optional forms, Petition to Vacate Arrest or Conviction (Human Trafficking Victim) (form CR-407) and Order to Vacate Arrest or Conviction (Human Trafficking Victim) (form CR-408) in response to recent legislation¹ that establishes a petition process under Penal Code section 236.14 to vacate a conviction or adjudication for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for committing a nonviolent offense while he or she was a victim of human trafficking, and for the sealing and destruction of the petitioner's arrest and court records. **SPR18-15**

Criminal Procedure: Confidentiality of Court-Appointed Experts' Reports in Mental Competency Proceedings *(amend rule 4.130)* The Criminal Law Advisory Committee proposes amending the California rule of court relating to mental competency proceedings in criminal cases. This proposal would amend the rule to make court-appointed experts' reports on a criminal defendant's competency to stand trial presumptively confidential, while also including procedures for interested parties to request access to the experts' reports. The proposal was suggested by a judge of the Superior Court of Los Angeles County. **SPR18-16**

Criminal Procedure: Determination of Probable Cause Under Penal Code section 1368.1(a)(2) *(adopt rule 4.131)* The Criminal Law Advisory Committee proposes the adoption of a California rule of court relating to determinations of probable cause under Penal Code section 1368.1(a)(2). Senate Bill 684 (Bates; Stats. 2017, ch. 246), effective January 1, 2018, amended Penal Code section 1368.1(a)(2) to allow a prosecuting attorney to request a probable cause determination for a defendant who is incompetent to stand trial, if the complaint charges specified offenses and the probable cause determination is sought "solely for the purpose of establishing the defendant is gravely disabled" under Welfare and Institutions Code section 5008(h)(1)(B), commonly referred to as a Murphy conservatorship. **SPR18-17**

Criminal Procedure: Judicial Council Forms for a Dismissal of a Conviction of a Violation of Penal Code Section 647f *(approve forms CR-404 and CR-405)* Senate Bill 239 (Weiner; Stats. 2017, ch. 537), effective January 1, 2018, invalidates convictions for violations of Penal Code section 647f (felony prostitution) and adds section 1170.22 to the Penal Code, which outlines a petition and application process for the dismissal of section 647f convictions. The Criminal Law Advisory Committee **SPR18-18**

proposes two optional forms to be used for petitioners/applicants to request the court for relief under Penal Code section 1170.22. Penal Code section 1170.22(i) specifically instructs the Judicial Council to “promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.”

Criminal Procedure: Petition to Seal Arrest and Related Records (*approve forms CR-409, CR-409-INFO, and CR-410*) Senate Bill 393 (Lara; Stats. 2017, ch. 680), effective January 1, 2018, added section 851.91 to the Penal Code, which outlines how an individual who suffered an arrest that did not lead to a conviction can file a petition to have the arrest and related records sealed. The Criminal Law Advisory Committee proposes the development of a petition to seal arrests as directed by Penal Code section 851.91(b)(3), which requires the Judicial Council to furnish forms. **SPR18-19**

Family and Juvenile

Family Law: Changes to Continuance Rule and Forms (*amend rule 5.94; approve forms FL-302-INFO, FL-306-INFO, FL-308, and FL-309; revise forms FL-303 and FL-306; and revoke and replace form FL-307*) The Family and Juvenile Law Advisory Committee proposes changes to one rule of court and three forms relating to the procedure for continuing a hearing as described in that rule. In addition, the committee proposes two new information sheets—one that explains the process associated with form FL-306 and another that describes the options for rescheduling a hearing. The changes are intended to respond to the concerns raised by courts that form FL-306, revised effective September 1, 2017, is not being used by attorneys and parties for the limited purpose intended by the Judicial Council and to provide general information to litigants about rescheduling hearings. **SPR18-20**

Family Law: Income and Expense Declaration (*revise form FL-150*) The Family and Juvenile Law Advisory Committee recommends making time-sensitive revisions to Income and Expense Declaration (form FL-150) to implement the recent changes to the tax treatment of alimony (spousal support) under the Internal Revenue Code of 1986, which becomes effective January 1, 2019. In addition, the committee recommends changes to update the reference to a military housing allowance acronym which may lead to confusion. The committee is considering proposing more substantial revisions to the FL-150 in the future and welcomes additional suggestions for the form. **SPR18-21**

Family Law: Transfer of Jurisdiction (*adopt rule 5.97*) The Family and Juvenile Law Advisory Committee proposes the adoption of a new rule of court to implement the requirements of Assembly Bill 712 (Bloom; Stats. 2017, ch. 316). The legislation requires the council to adopt a rule of court to establish time frames for the transfer and receipt of jurisdiction over family law actions. **SPR18-22**

Juvenile Law: Decriminalization of Convictions Under Penal Code Section 647f (*adopt forms JV-742 and JV-743*) The Family and Juvenile Law Advisory Committee proposes approving two new forms to comply with Senate Bill 239 (Wiener; Stats. 2017, ch. 537), which decriminalizes convictions based on Penal Code section 647f and requires the Judicial Council to promulgate forms to implement the legislation. The proposed forms would allow those who are eligible for relief to request that their **SPR18-23**

Penal Code 647f conviction be vacated and dismissed, and that they be resentenced, if appropriate.

Juvenile Law: Vacatur of Convictions Related to Human Trafficking and Preservation of Extended Foster Care Eligibility (*amend rules 5.812, 5.903, and 5.906; adopt Cal. Rules of Court, rule 5.811; revise forms JV-320, JV-367, JV-462, JV-464, JV-466, JV-470, JV-472, JV-680, JV-682, and JV-683; approve forms JV-748 and JV-749*) The Family and Juvenile Law Advisory Committee proposes amending three rules and adopting one new rule of the California Rules of Court, revising eight Judicial Council forms, and approving two new Judicial Council forms to implement Assembly Bill 604 (Gipson; Stats. 2017, ch. 707), which clarified that extended foster care benefits are available to young people who have adjudications that are eligible for vacatur pursuant to Penal Code section 236.14. The committee further proposes revising form JV-462 to include certain changes necessitated by recent legislation. The committee also proposes making a technical change to form JV-462, and revising form JV-367 to reflect how the form is typically used. Finally, the committee proposes amending rules 5.903 and 5.906 to clarify who may attend status review hearings for former wards who have become nonminor dependents.

SPR18-24

Juvenile Law: Electronic Filing and Service in Juvenile Court Matters (Implementation of AB 976) (*amend rules 5.504, 5.522, 5.524, 5.534, 5.538, 5.565, 5.570, 5.590, 5.640, 5.695, 5.700, 5.726, 5.727, 5.728, and 5.906; adopt rule 5.523; revise forms EFS-005-JV/JV-141, JV-221, JV-282, JV-310, JV-326, JV-326-INFO, and JV-510*) To implement Assembly Bill 976 (Stats. 2017, ch. 319), the Family and Juvenile Law Advisory Committee proposes amending 15 of the California Rules of Court, adopting one new rule, and revising seven Judicial Council forms. Assembly Bill 976 authorizes electronic filing and service in juvenile matters, pursuant to Code of Civil Procedure section 1010.6. The bill extends the ability to conduct electronic filing and service to all juvenile matters, with some important exceptions and conditions designed to protect the confidential information of minors and to preserve paper notice of specified proceedings. The bill also requires affirmative consent to electronic service for unrepresented parties as of January 1, 2019. These legal changes require the modifications to rules and forms proposed in the Invitation to comment.

SPR18-25

Juvenile Law: School Notification of Delinquency Court Adjudication (*amend form JV-690*) The Family and Juvenile Law Advisory Committee proposes revising Judicial Council form JV-690 to provide clarity and conformity with Welfare and Institutions Code section 827(b) on what information is disseminated to a school when a child has committed certain criminal offenses.¹ The current form contains inaccuracies in the listed offenses and has been reported as confusing in terms of whether only the offenses on the form can be communicated to the school. The proposed changes reflect closely the language of section 827(b) and give the court the option to indicate the specific code section of the offense that was adjudicated. In addition, it is proposed that the form be revised to include more specific information for the school on how the form may be disseminated, to enhance confidentiality and help avoid situations in which the form is disseminated incorrectly. Finally, the committee recommends removing offenses from the form that are no longer eligible as felonies or misdemeanors.

SPR18-26

Juvenile Law: Dependency Hearings—Continued Condensing of the Rules of Court (*amend rules 5.678, 5.690, 5.695, and 5.708; repeal rule 5.526*) In title 5 of the California Rules of Court, the rules that provide the procedures to be followed during dependency court hearings from the initiation of the case through each of the status review hearings repeat statutory text, which makes the rules more cumbersome and necessitates frequent amendments whenever the underlying statutes are amended. During the 2017 legislative session, four bills were enacted that require amendments to the existing rules of court. This proposal would delete some of these unnecessary sections in the rules or replace them with references to the relevant code sections to enhance the brevity and accuracy of the rules.

SPR18-27

Juvenile Law: Intercounty Placements (*amend rule 5.610; repeal and adopt rule 5.614; approve forms JV-555 and JV-556*) The Family and Juvenile Law Advisory Committee recommends amending one rule and repealing and adopting one rule of the California Rules of Court, and approving two forms, to conform to recent statutory changes regarding who a child welfare agency must notice when moving a foster child to a different county.

SPR18-28

Juvenile Law: Guardianship Information (*revise forms JV-330 and JV-350*) The Family and Juvenile Law Advisory Committee proposes revising two forms to update legal information covering the establishment, supervision, modification, and termination of guardianships in juvenile court proceedings in language and a format easily understood by a person not trained in law. The proposal is needed to comply with an ongoing statutory mandate. Revisions were also suggested by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

SPR18-29

Interpreters

Court Interpreters: California Court Interpreter Credential Review Procedures (*repeal and adopt rule 2.891; adopt California Court Interpreter Credential Review Procedures*) To implement Recommendation 64 in the Strategic Plan for Language Access in the California Courts adopted by the Judicial Council in January 2015, and to fulfill the legislative mandate to adopt standards and requirements for interpreter discipline, the Court Interpreters Advisory Panel proposes to (1) repeal California Rules of Court, rule 2.891, on periodic review of court interpreter skills and professional conduct, and adopt new rule 2.891; and (2) adopt the California Court Interpreter Credential Review Procedures. The new rule of court directs the courts to the credential review procedures, which establish a process for the Judicial Council, as the court interpreter credentialing body, through Legal Services office staff, to review allegations of professional misconduct or malfeasance against a California certified or registered court interpreter. Any adjudications would be conducted by the California Office of Administrative Hearings.

SPR18-30

Probate

Probate Conservatorship: Major Neurocognitive Disorder (*revise forms GC-310, GC-313, GC-333, GC-334, GC-335, GC-335A, GC-380, and GC-385*) The Probate & Mental Health Advisory Committee proposes revising eight forms to implement

SPR18-31

recent legislation that replaced the term “dementia” with “major neurocognitive disorder” to conform to current usage in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

Guardianship and Conservatorship: Court-Appointed Counsel (*amend rule 7.1101; revise forms GC-010 and GC-011*) The Probate and Mental Health Advisory Committee proposes amending one rule of court that establishes minimum qualifications for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code. The committee also proposes revising two mandatory forms used by attorneys to certify that they meet the requirements for appointment. The rule amendments, in response to apparent inconsistencies with statute that were pointed out by courts, stakeholders, and disability rights advocates, would resolve any inconsistencies with statute, protect the rights of wards and conservatees by promoting more effective advocacy, and simplify the process of complying with the requirements.

SPR18-33

Technology

Technology: Rules Modernization Project (*amend rules 2.250, 2.251, 2.255, and 2.257*) As part of the Rules Modernization Project, the Information Technology Advisory Committee recommends amending several rules related to electronic service and electronic filing. The purpose of the proposal is to conform the rules to the Code of Civil Procedure, clarify and remove redundancies in rule definitions, and ensure indigent filers are not required to have a payment mechanism to create an account with electronic filing service providers (EFSPs). The proposal includes amendments required by statute and suggested by the public.

SPR18-36

Technology: Remote Access to Electronic Records (*adopt rules 2.515–2.528 and 2.540–2.545; amend rules 2.500–2.503*) The proposal makes limited amendments to rules governing public access to electronic trial court records and creates a new set of rules governing remote access to such records by parties, parties’ attorneys, court-appointed persons, authorized persons working in a legal organization or qualified legal services project, and government entities. The purpose of the proposal is to facilitate existing relationships and provide clear authority to the courts.

SPR18-37

The project to develop the new rules originated with the California Judicial Branch Tactical Plan for Technology, 2017–2018. Under the tactical plan, a major task under the “Technology Initiatives to Promote Rule and Legislative Changes” is to develop rules “for online access to court records for parties and justice partners.” (Judicial Council of Cal., California Judicial Branch Tactical Plan for Technology, 2017–2018 (2017), p. 47.)

Technology: Rules Modernization Project Proposed Rules (*adopt form EFS-006*) As part of the Rules Modernization Project, the Information Technology Advisory Committee and Civil and Small Claims Advisory Committee recommend adopting a new form for withdrawal of consent to electronic service. The purpose of the proposal is to comply with Code of Civil Procedure section 1010.6(a)(6), which requires the Judicial Council to create such a form by January 1, 2019.

SPR18-38

Tribal Court State Court Forum

Indian Child Welfare Act: Waiver of Certain Pro Hac Vice Requirements for Attorneys Representing Tribes in Indian Child Welfare Act cases *(amend rule*

SPR18-39

9.40) The Tribal Court–State Court Forum recommends amending California Rules of Court, rule 9.40, governing out-of-state counsel appearing pro hac vice. The amendment would exempt from two of the requirements of rule 9.40 attorneys representing an Indian tribe in a child custody proceeding governed by the Indian Child Welfare Act (25 U.S.C. §§ 1903–1963; ICWA). Under ICWA, Indian parents and custodians are entitled to appointed counsel, and Indian tribes and custodians are entitled to intervene in state court child custody proceedings governed by ICWA. The California ICWA Compliance Task Force suggested that certain pro hac vice requirements should be waived for out-of-state attorneys in cases governed by the Indian Child Welfare Act to improve tribal representation in ICWA cases in California courts.