

# INVITATIONS TO COMMENT

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

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

SPRING 2012

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## Alternative Dispute Resolution

**[Alternative Dispute Resolution: Judicial Arbitration](#)** (amend Cal. Rules of Court, rules 3.819 and 3.827) This proposal would amend the rules for the judicial arbitration program to: (1) provide that an arbitrator can request compensation if the arbitrator devoted a substantial amount of time to a case that was settled without filing of an award; and (2) clarify that, in order to prevent entry of a judicial arbitration award as the judgment in a case, any request to dismiss the entire case must be signed by all parties to the case and any request to dismiss all parties to the arbitration must be signed by all those parties. **SPR12-01**

## Appellate

**[Appellate Procedure: Appointment of Appellate Counsel in Juvenile Delinquency Appeals](#)** (amend Cal. Rules of Court, rule 8.403) This proposal would amend rule 8.403(a) to more accurately reflect the scope of Welfare and Institutions Code section 634 by deleting the sentence regarding appointment of appellate counsel for juveniles at the parents' or guardians' expense in delinquency appeals. This proposal originated from a suggestion made by the Appellate Court Committee of the San Diego County Bar Association. **SPR12-02**

**[Appellate Procedure: Contents of normal record in criminal appeals](#)** (amend Cal. Rules of Court, rules 8.320, 8.867 and 8.920) To save time and costs for both litigants and courts associated with making and considering requests to augment the record and preparing and transmitting supplemental clerk's or reporter's transcripts to the reviewing court, this proposal would add items to the normal record in certain criminal appeals that are routinely needed for appellate review in these cases. This proposal originated from a suggestion submitted by the Appellate Court Committee of the San Diego County Bar Association. **SPR12-03**

**[Appellate Procedure: Premature or Late Notice of Intent to File Writ Petition in Juvenile Dependency Proceeding](#)** (amend Cal. Rules of Court, rule 8.450) The proposed amendments would: (1) fill a gap in the rules by specifying what happens if a notice of intent to file a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26 is filed too early or too late; and (2) save trial courts costs associated with unnecessarily sending notices and preparing records **SPR12-04**

when such notices are filed prematurely. This proposal would also remove alleged parents from the list of those to whom the clerk must send copies of a notice of intent. This proposal is based on suggestions received from the California Appellate Clerks Association and a Court of Appeal staff attorney.

**Appellate Procedure: Transmission of Administrative Records on Appeal** (amend Cal. Rules of Court, rule 8.123) This proposal is intended to provide costs savings and efficiencies for superior courts by relieving the clerk of responsibility for transmitting to the Court of Appeal an administrative record that was admitted in evidence, refused, or lodged in the superior court and subsequently designated for inclusion in the record on appeal if that record was returned to a party. This proposal is based on a suggestion submitted by the California Appellate Clerks Association. **SPR12-05**

**Appellate Procedure: Costs on Appeal** (amend Cal. Rules of Court, rule 8.278) The Appellate Advisory Committee is proposing that the rule regarding recoverable costs on appeal be amended to provide that the interest expenses and fees incurred to borrow funds to deposit as security for a letter of credit procured to secure an appeal bond are recoverable costs. **SPR12-06**

**Appellate Court Administration: Court of Appeal Records** (amend Cal. Rules of Court, rule 10.1028) This proposal would update the rule regarding preservation of Court of Appeal records to reflect recent changes in the Government Code section regarding creation, maintenance, and preservation of trial court records on which this appellate rule is based. These amendments are intended to allow the Courts of Appeal to take advantage of modern technology in the creation, maintenance, and preservation of their records. **SPR12-07**

## **Appellate and Court Technology**

**Appellate Procedure: Copies of Briefs in Civil Appeals in the Court of Appeal Served on the Supreme Court** (amend Cal. Rules of Court, rules 8.44 and 8.212) This proposal would amend the rules relating to the copies of briefs from civil appeals in the Court of Appeal that must be served on the Supreme Court to provide that: (1) unless it would cause the party filing the brief undue hardship, a single electronic copy of the brief must be served on the Supreme Court, rather than four paper copies; and (2) petitions for rehearing and answers to these petitions are not considered “briefs” for this purpose. This proposal is based on a suggestion from the Appellate E-Filing Working Group of the Appellate, Court Technology, and Administrative Presiding Justices Advisory Committees. **SPR12-08**

**Trial and Appellate Court Procedure: Addresses and Telephone Numbers of Parties and Attorneys** (amend Cal. Rules of Court, rules 2.200, 8.32, 8.40, 8.204, 8.816, 8.883, and 8.928 and revise form APP-101-INFO, CR-131-INFO), CR-141-INFO, and MC-040) This proposal would amend the rules to be consistent and require that attorneys and selfrepresented parties in both trial and appellate courts initially provide the same contact information, including e-mail addresses if available, and provide that changes in this information, including e-mail addresses, trigger a requirement that they notify the court and other parties. This proposal would also clarify that if multiple attorneys from the same law firm, corporation, or public law **SPR12-09**

office are joining in a document filed in the Court of Appeal, the cover of the document must include the names and State Bar numbers for all of the attorneys, but the law firm, corporation, or public law office must designate only one attorney to receive notices and other communications from the court. This proposal originated from suggestions submitted by a Clerk of the Court of Appeal and by the California Appellate Court Clerks Association.

## Civil and Small Claims

**Small Claims: Form to Dismiss and Give Notice of Entry of Dismissal** (approve form SC-198) This is a proposal for a new Judicial Council form, *Dismissal and Notice of Dismissal of Claim*, for a small claims litigant to voluntarily dismiss a claim, for the court to indicate whether the dismissal was entered, and for the court or the litigant to notify other parties of the dismissal. The Civil and Small Claims Advisory Committee originated this proposal as part of an initiative to promote and facilitate the voluntary settlement and dismissal of small claims proceedings. **SPR12-10**

**Small Claims: Forms to Address Default in Payment of Judgment in Installments** (approve forms SC-225 and SC-225A) This is a proposal for two new optional court order forms for use when a judgment creditor has alleged a default in the payment of a small claims judgment that the court previously ordered may be paid in installments. The forms were developed in response to the suggestion of a member of the Judicial Council's Rules and Projects Committee. **SPR12-11**

**Civil Practice and Procedure: Notice of Conditional Settlement** (amend Cal. Rules of Court, rule 3.1385) If a settlement agreement conditions the dismissal of a case on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, rule 3.1385 requires that a notice of conditional settlement specify the date by which the dismissal is to be filed. The proposed amendment would provide that hearings and other proceedings requiring the appearance of a party be vacated during the time between the filing of the notice of conditional settlement and the specified dismissal date. The Civil and Small Claims Advisory Committee's Collections Cases Working Group, which is made up of advisory committee members and outside consultants, proposed this rule amendment. Attorney members of the working group reported that because court proceedings requiring the appearance of parties are not vacated, they often have to make unnecessary appearances after a case has been settled but before all installment payments have been made and before a request for dismissal has been filed. **SPR12-12**

**Civil Trials: Voir Dire Rules of Court** (amend rules 2.1034 and 3.1540) Assembly Bill 1403 amended the civil jury voir dire statute, Code of Civil Procedure section 222.5. The Civil and Small Claims Advisory Committee proposes amending the rules of court concerning jury selection in civil cases to conform to the statutory amendments and to delete those sections of the rules that are duplicative of or inconsistent with statutory provisions. **SPR12-13**

**Discovery: New Form Interrogatories for Construction Litigation** (approve form DISC-005) The Civil and Small Claims Advisory Committee recommends new *Form Interrogatories—Construction Litigation*, which includes interrogatories on topics **SPR12-14**

specific to construction litigation as well as several topics from the general civil form interrogatories, some of which have been revised to more specifically address construction cases. Form interrogatories exist for general use in civil cases and for certain specialized types of cases, but there are currently none specifically for use in construction litigation. Practitioners in the area of construction litigation have urged adoption of form interrogatories for several years, with the goals of eliminating the need for parties to craft special interrogatories for the most commonly asked questions, standardizing those questions so that parties will be aware of what information will have to be provided in the action and, as a result, decreasing the number of motions to compel filed in the courts.

## **Criminal**

**Criminal Justice Realignment: Felony Waiver and Plea Form** (revise form CR-101) The Criminal Law Advisory Committee proposes revisions to the Judicial Council Plea Form, With Explanations and Waiver of Rights—Felony (form CR-101) in response to recent criminal justice realignment legislation that modified felony sentencing laws. **SPR12-15**

**Criminal Procedure: Transcripts of Notification of Appeal Rights** (amend Cal. Rules of Court, rule 4.305, and revoke rule 4.470) The Criminal Law Advisory Committee proposes revoking rule 4.470 and amending rule 4.305 to delete a requirement that court reporters prepare, certify, and file transcripts of certain sentencing proceedings in all applicable cases. The committee developed the proposal in light of recent statutory amendments to Penal Code section 1203.01 that relieved courts from producing similar transcripts in every felony case resulting in a prison sentence. **SPR12-16**

## **Family and Juvenile Law** (see also SPR12-02 and SPR12-04)

**Family Law: Amend Forms for Dissolution of Domestic Partnership or Marriage to Correct Substantive Omissions and Other Issues** (revise forms FL-103 and FL-123) Family law practitioners have indicated that forms FL-103 and FL-123 contain substantive omissions and formatting errors which make them unusable by some parties for whom the forms were intended. The Family and Juvenile Law Advisory propose correcting the forms so that they are consistent with their stated purpose. **SPR12-17**

**Family Law: Revisions to Adoption Forms** (revise forms ADOPT-200 and ADOPT-215) The Family and Juvenile Law Advisory Committee proposes to revise two Judicial Council forms for use in adoption proceedings. Changes are needed to conform to new legislation, Assembly Bill 687, which allows the court to issue orders of adoption nunc pro tunc in certain cases. Other proposed changes respond to many suggestions the Administrative Office of the Courts (AOC) has received from courts and other users to make the forms both easier to use and more comprehensive. **SPR12-18**

**Juvenile Law: Interstate Compact on the Placement of Children** (amend rule 5.616, and revise forms JV-565 and JV-567) The interstate agreement known as the Interstate Compact on the Placement of Children or ICPC governs the placement of **SPR12-19**

California children in other states, as well as the placement of out-of-state children in California. Although the Interstate Compact on the Placement of Children has not changed in recent years, the regulations implementing the ICPC were amended in 2010 and again in 2011. Most notably, Regulation No. 7, regarding expedited out-of-state placements of dependent children, was significantly expanded and revised in 2011. In addition, a 2010 Court of Appeal opinion invalidated rule 5.616(b)(1) of the California Rules of Court, which concerns placement of a child out of state in the home of a parent. These developments require that rule 5.616 and two ICPC-related forms be revised to bring them in line with the new requirements.

**Juvenile Law: Access to Services** (amend Cal. Rules of Court, rules 5.502, 5.534, 5.650, 5.695, 5.708, and 5.790; renumber and amend rule 5.651 as rule 5.653; renumber rule 5.652 as rule 5.654; adopt rules 5.651 and 5.652; and revise Judicial Council forms JV-225 and JV-535) The proposal would make rules and forms consistent with recent legislation intended to improve access to educational and developmental services for juvenile dependents and wards. Specifically, the new requirements of Senate Bill 368 on the limitation of parental authority to make decisions concerning dependent children’s developmental services; the extension in Assembly Bill 1933 of a child’s right to remain in his or her school of origin to “the duration of the jurisdiction of the court”; and the requirements in AB 791 that the juvenile court, whenever it denies or terminates reunification services, order that the agency provide the child's birth certificate to the caregiver and, if the child is over 16, to the child. Finally, rule 5.790 would be amended to include a provision that requires the court to make findings regarding the probation department’s family-finding investigation required by Welfare and Institutions Code section 628(d), which was added by AB 938 in 2009.

**SPR12-20**

**Juvenile Dependency: Counsel Collections Program** (adopt Juvenile Dependency Counsel Collections Program Guidelines; approve forms JV-130-INFO, JV-131, JV-132, JV-133, JV-134, JV-135, JV-136) Recent legislation requires the Judicial Council to establish a program to collect the cost of dependency-related legal services from responsible persons who are able to bear that cost. Specifically, section 903.47 of the Welfare and Institutions Code, as added in 2009 by Assembly Bill 131, and amended by Assembly Bill 1229 and Senate Bill 647, requires the Judicial Council to “establish a program to collect reimbursements from the person liable for the costs of counsel appointed to represent parents or minors” under section 903.1 in dependency proceedings. The statute further mandates that the program include a statewide standard for determining a responsible person’s ability to pay reimbursement as well as policies and procedures allowing a court to recover its costs associated with implementing the program. The guidelines are intended to give each court the greatest possible flexibility, within the limits imposed by statute, to implement the program in the most cost-effective manner and to tailor the program to local needs and circumstances.

**SPR12-21**

## **Probate**

**Probate Guardianships: Communications Between California Courts on Guardianship Venue Issues** (adopt Cal. Rules of Court, rule 7.1014) The proposal would implement a new statutory requirement regarding a court in which a petition for the appointment of a guardian of the person of a minor has been filed. Such a court

**SPR12-22**

must communicate with courts in all other California counties where family law custody or visitation proceedings concerning the minor were previously filed before determining the appropriate venue for the guardianship proceeding. The proposed rule is a response to a provision in the new law that directs the Judicial Council to adopt rules of court to implement the intercourt communication mandate of the law by January 1, 2013.

**Probate Guardianships: Testimony of (Proposed) Wards and Other Children in Guardianship Cases** (adopt Cal. Rules of court, rule 7.1016) **SPR12-23**  
The proposal would extend to probate guardianship proceedings provisions of recently effective legislation and parts of a recently adopted rule of court pertaining to the testimony of children involved in custody and visitation litigation under the Family Code. The Probate and Mental Health Advisory Committee proposes a probate rule of court on this topic because the Family Code section that compelled the adoption of the new family law rule of court applies also to the appointment of a guardian of the person of a child. The advisory committee recommends the adoption of a separate rule concerning the receipt of information from (proposed) wards in guardianship proceedings rather than the direct application of the family law rule to those proceedings because of differences between the two types of cases.

**Probate: Notice to Creditors in Decedents' Estates** (revise forms DE-121 and DE-157) **SPR12-24**  
Certain advice given in two Judicial Council forms to creditors of a decedent concerning the time they have to file claims with the court and the personal representative of the decedent's estate is inaccurate and potentially misleading in some situations. This advice is mandated by statute. Legislation sponsored by the Judicial Council is anticipated in 2012 to amend the statute to require the forms to provide more accurate advice. If that legislation becomes law effective on January 1, 2013, the forms must be revised to conform to the amended statute. The forms also fail to alert creditors that law other than that governing the creditors' claim process may affect their claims. The Probate and Mental Health Advisory Committee proposes to revise the forms effective on the same date as the legislation to address these defects.

## **Protective Orders**

**Protective Orders: Notice of New Hearing and Order on Reissuance** (revise form DV-116) **SPR12-25**  
The Family and Juvenile Law Advisory Committee proposes revisions to the Notice of New Hearing and Order on Reissuance (form DV-116) to reduce confusion and promote safety, as suggested by courts and members of the public.

**Protective Orders: Emergency Protective Order Form** (revise Form EPO-001) **SPR12-26**  
The proposal would revise the *Emergency Protective Order* to highlight the firearms provisions that apply when the order is issued and to collect information whether firearms have been reported, observed, searched for, or seized in the case. In addition, the *Emergency Protective Order* would be reorganized and other changes would be made so that the form will be more effective and easier to understand. This proposal to revise the emergency protective order form was developed by the Protective Orders Working Group based on suggestions from the Domestic Violence Practice and Procedure Task Force.



## Traffic

**Traffic and Criminal Law: Notice to Appear Forms** (amend Cal. Rules of Court, rule 4.103; revise form TR-INST; and adopt form TR-135) Vehicle Code section 40500(b) authorizes the Judicial Council to prescribe the form of a notice to appear that is issued when a person is arrested for misdemeanor or infraction violations of the Vehicle Code. Penal Code section 853.9 further authorizes the council to approve notice to appear forms for nontraffic offenses. Penal Code section 959.1(d) permits a notice to appear issued on a form approved by the Judicial Council to be received and filed by a court in electronic form. In response to issues courts have reported with electronic citation forms and procedures and to improve uniformity of the content of notice to appear forms used for electronic citations issued by arresting officers, the Traffic Advisory Committee recommends the amendment of rule 4.103 of the California Rules of Court, the adoption of form TR-135, and the revision of form TR-INST, to become effective July 1, 2013.

**SPR12-27**