



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-189*

For business meeting on: September 25, 2020

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<b>Title</b>	<b>Agenda Item Type</b>
Collaborative Justice: Notification of Military Status	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
Revise form MIL-100	January 1, 2021
<b>Recommended by</b>	<b>Date of Report</b>
Collaborative Justice Courts Advisory Committee Hon. Richard Vlavianos, Cochair	September 4, 2020
	<b>Contact</b>
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### Executive Summary

The Collaborative Justice Courts Advisory Committee recommends revising *Notification of Military Status* (form MIL-100), which informs the court that a party in a court case is or was in the military, to include additional clarifying and instructional information. The revisions to the current form will enable courts to improve early identification of court litigants in all case types who have a military affiliation, and will assist courts in complying with Penal Code section 858 requirements.

### Recommendation

The Collaborative Justice Courts Advisory Committee recommends that the Judicial Council, effective January 1, 2021, revise *Notification of Military Status* (form MIL-100) to:

1. Clarify that that the form can be used by both former and current members of the state and federal armed services, including the reserves, by adding “Veteran/Reserve/Active” to the title of the form.
2. Provide information as to when and how often the form may be filed.

3. Indicate that no filing fees apply to this form by adding “No Filing Fee. No filing fee or court costs are to be charged for this form” to the bottom of the form.
4. Provide information on the form’s purpose by adding clarifying language to page 2, including the statement “Filling out the MIL-100 form is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be filled out at any time.”
5. Ensure understanding that disclosure of one’s military status is optional by including additional language and the statement in bold “You do not have to provide this information to the court” to the top of page 2 of the form, and stating “Giving this information to the court is voluntary” in the instructions.
6. Make the form easier to complete by removing unnecessary items asking for entry date and status of duty.
7. Make minor wording and structural changes to improve grammar and readability.

The proposed changes seek to improve form clarity and better inform users of the broad applicability of the form, while retaining all required notifications and information for parties in criminal cases. The revised form is attached at pages 6–7.

### **Relevant Previous Council Action**

The Judicial Council adopted form MIL-100 effective January 1, 2014, at the recommendation of the Collaborative Justice Courts Advisory Committee. The committee recommended adoption of the form to facilitate courts’ ability to address legal issues implicated by a party’s military service status and to comply with alternative criminal sentencing considerations for current and former military service members under Penal Code section 1170.9.

The Judicial Council adopted revisions to form MIL-100, effective July 1, 2015. These revisions responded to legislation directing the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code section 1170.9 and related statutes, and to include a space for the local court to provide contact information for the county veterans service office.

### **Prior circulation**

A proposal to revise form MIL-100 was circulated for public comment. The proposed revisions were intended to make form MIL-100 easier to use in noncriminal cases, as well as to ensure consistent information by making the form mandatory. Due to the feedback received from commenters, the proposal to revise form MIL-100 was deferred from the spring 2019 cycle and recirculated in the winter 2020 cycle. In order to fully consider the comments received the committee elected to delay this report and bring to the council with spring 2020 items. This allowed the committee to incorporate changes suggested by commenters such as honing the

informational language on the form for clarity and comprehension, including language to clarify that there was no filing fee, and providing information in the invitation to comment on the effect of changing the form from optional to mandatory. Due to these suggested changes, the committee also wanted to allow for a period of additional public comment.

### **Analysis/Rationale**

Senate Bill 1110 (Jackson; Stats. 2014, ch. 655) amended Penal Code section 858, effective January 1, 2015, to direct the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code section 1170.9 and related statutes, and to include a space for the local court to provide contact information for the county veterans service office. Revisions to the form incorporating these changes went into effect July 1, 2015. After the revised form was in use, some litigants expressed confusion about the case types for which the form should be used. Although the military or veteran status of a party may be relevant in many kinds of court cases, the 2015 revisions made to be responsive to the requirements of Penal Code sections 858 and 1170.9 unintentionally gave the appearance that form MIL-100 was for use solely in criminal cases. Concerns were also raised that the form requested information that was not needed by the court, making the form unnecessarily difficult to complete. To address these issues, the committee recommends adopting the proposed revisions to form MIL-100.

### **Policy implications**

The recommended revisions promote several Judicial Council policy objectives. The revision of form MIL-100 promotes access to the courts by making the form easier to complete and by better explaining that past or present servicemembers may have rights as a result of their service. The revisions to the form also improve the quality of justice and service to the public by making clear that the form can be used in all case types. Encouraging litigants to declare their military status early in a case will enable judicial officers to handle cases more effectively and efficiently.

### **Comments**

This proposal circulated for comment as part of the winter 2020 invitation-to-comment cycle from December 11, 2019, to February 12, 2020, to the standard mailing list for proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, self-help center staff, legal services attorneys, and other criminal, juvenile, and family law professionals. Four organizations and one individual provided comment: four agreed with the proposal and one agreed if modified. No commenters opposed the proposal. The invitation to comment asked specific questions about whether the form should be mandatory or remain optional, and whether the form should indicate different case types. Discussion of those issues is below.

A chart with the full text of the comments received and the committee's responses is attached at pages 8–14.

### ***Status as an optional form***

As circulated for comment, the form was proposed to become mandatory. This aspect of the proposal brought mixed reactions. Two commenters were in favor of the change. While one commenter in agreement with changing the form's status did not expound upon the reason, the other commenter expressed the belief that making the form mandatory would help inform servicemembers of their rights and thereby make it more likely that they would provide the court with their service information. However, three commenters were opposed to making the form mandatory. While one commenter did not articulate a reason, other commenters expressed concern for procedural issues that may arise in court and burdens on litigants that may occur as a result of making completion of form MIL-100 required for those who wished to declare their military status. One commenter also raised the issue of costs associated with making the form mandatory, including the need to train court staff. While the committee acknowledges that there are significant benefits to making form MIL-100 mandatory, it also understands the expressed concerns about creating additional requirements for court litigants and imposing burdens on courts during a period when they are facing substantial challenges. Thus, at this time, the committee recommends keeping the form optional.

### ***Identification of case type***

The committee also sought feedback on whether the form should include identification of different case types. The committee believed that including a listing of different types of cases for which the form may apply could promote use of the form in all case types, but also recognized that litigants may not always know the appropriate category for their case, thus creating an additional hurdle for filing the form. While one commenter indicated that including the information could be helpful for case management systems, another commenter indicated that the information contained in the form was already sufficient to inform users of the broad applicability of the form. Recognizing the potential additional costs for courts to add and train staff on this information, as well as the desire to keep the form as simple as possible, the committee is not recommending adding specific case types on the form.

### **Alternatives considered**

The committee considered not amending the form, but rejected that option since the confusion expressed by litigants about applicability of the form in noncriminal case types would remain unaddressed. It would also hinder access to justice by not providing the additional clarifying information to servicemembers that the proposed form contains.

### **Fiscal and Operational Impacts**

The committee does not anticipate that this proposal will result in any costs to the branch other than the one-time cost of implementing the revised form. Nor does the committee anticipate any requirements for implementation or fiscal and operational impacts on the courts. There is the potential for cost savings: if the court is aware at an early stage of the proceeding that a party to the action has a military affiliation that is relevant to the case, it reduces the chance of needing additional hearings to address this issue once it is discovered at a later time.

## **Attachments and Links**

1. Form MIL-100, at pages 6–7
2. Chart of comments, at pages 8–14

<b>PERSON COMPLETING THIS FORM:</b> NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: <b>STATE BAR NUMBER (IF APPLICABLE):</b>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b>  <b>Not approved by</b>  <b>the Judicial Council</b>  <b>MIL-100.v9.090320.cz.AEM</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
<b>NOTIFICATION OF MILITARY/VETERAN/RESERVE/ACTIVE STATUS</b>	CASE NUMBER:

- This form is about (*name*): \_\_\_\_\_ who is a party in this case.
  - The person listed in item 1 is:
    - A current member of the state or federal armed services or reserves.
    - A veteran of the state or federal armed services or reserves.  
Discharge Date: \_\_\_\_\_
  - I am  the person listed in item 1.  
 an attorney in the above entitled case.  
 other (*specify*): \_\_\_\_\_
- I am providing this notification to the court based on information and belief.

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_

(TYPE OR PRINT NAME OF PERSON FILING THIS FORM) (SIGNATURE)

**Notice**

This form can be filed in any case type. If this form is being submitted in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.

Local County Veterans  
Services Office Information  
(to be provided by local court): \_\_\_\_\_

**For court use only**

**No Filing Fee**

No filing fee or court costs are to be charged for this form.

## YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE FOLLOWING INFORMATION

**If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law.** Filing out form MIL-100 is a way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. The MIL-100 only needs to be filled out with the court one time per case.

### NONCRIMINAL CASES

**If you are a party to a noncriminal case (i.e., civil, family, juvenile, etc.), be sure to complete all the appropriate forms needed for your case.**

For example, filing of this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Please see *Notice of Petition and Petition for Relief From Financial Obligation During Military Service* (form MIL-010) and *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

### CRIMINAL CASES

**If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.**

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law. Some examples of benefits of a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restoration relief such as sealing your record, and diversion in misdemeanor cases.

Below is a brief description of possible rights and protections under the following California laws:

#### California Penal Code section 1170.9

- Treatment instead of prison or jail time for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered;
- Felonies reduced to misdemeanors;
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes;

#### California Penal Code section 1001.80

- Pretrial diversion program instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program;
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program;

#### California Penal Code section 1170.91

- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

**If you submit this form in a criminal case, you must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.**

## Winter 20-06

Notification of Military Service: Revise form MIL-100 (Revise form MIL-100)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Response</b>
1.	Hon. Donald Currier Superior Court of Sacramento County	A	In almost every area of law, the options available to the Court change when one of the parties is a veteran or service member. Many times litigants don't understand the significance of their service to their status as a civil or criminal litigant. Mandatory use of this form will assist trial judges in better understanding the litigants appearing before them.	While the committee agrees that there are significant benefits to making the MIL-100 mandatory, it also understands the concerns expressed by commenters about creating additional requirements for court litigants and imposing burdens on courts. Thus, the committee recommends keeping the form optional.
2.	Public Law Center By: Leigh E Ferrin	AM	<p>Public Law Center (PLC) is a 501(c)(3) not-for-profit organization that provides free civil legal services to low-income individuals and families across Orange County. The civil legal services that we provide include consumer, family, immigration, housing, veterans, community organizations, and health law.</p> <p>PLC appreciates the opportunity to comment on Invitation W20-06, the proposal to revise form MIL-100. PLC works closely with the veteran community and recognizes many of the challenges faced by the community often exacerbate the legal challenges they face. To this end, it is appreciated that the Court is approaching this issue with sensitivity and understanding.</p> <p>PLC's concern about making MIL-100 mandatory instead of optional is the following: what happens if a veteran or servicemember uses a different format to submit this information? What if a self-represented veteran</p>	<p>No response required</p> <p>No response required</p> <p>The committee has modified the proposal and is not seeking to make the form mandatory.</p>



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	Commenter	Position	Comment	Committees Response
			<p>uses a declaration, pleading paper or even a more informal submission? Would the Court still be able to accept such an offer? We are particularly thinking of self-represented veterans in the civil, family law and probate context. In the criminal context, it is much more likely that the form would be used.</p> <p>We would encourage the Court, if the form is made mandatory, to provide education to the bench that if a litigant asserts his or her status as a veteran or servicemember, it should be considered as if the litigant has submitted form MIL-100, and the Court can provide the form to the veteran at that time. However, the veteran should not be punished for not initially being able to complete form MIL-100.</p> <p>PLC also would be interested in proposing a possible legislative fix, whereby a party to civil litigation would be required to honor a statement by any party that they are a servicemember or a veteran (or a person who has served in the U.S. Military – see below). Once that statement is made, the legislation could create a presumption that the person making the claim is a servicemember or veteran, and then the additional information could be collected at that point.</p> <p>The language used in the form is potentially problematic as well. PLC encounters clients</p>	<p>The committee appreciates the recommendation that education be provided to the bench concerning the MIL-100 and the disclosure of military status, and will continue to support education on this topic.</p> <p>A legislative fix creating a presumption of veteran status upon the statement of an individual is beyond the scope of the proposed revisions of this MIL-100 and the committee at this time.</p> <p>The committee agrees with the suggestion to include additional language on the form to</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Response</b>
			<p>who have served in a branch of the military but do not necessarily identify themselves as a “veteran.” This can be due to the character of discharge, the lens through which the individual views his or her service, or just general preference to not be considered a “veteran” considering some of the stereotypes (good or bad) that may come with that word. PLC suggests using a longer, but more neutral description: “Served in the United States military, in any branch, at any time,” or something similar.</p> <p>Another question that comes up is about the timing of filing. This could be a clarification with the Rules of Court, but is a veteran of servicemember able to submit a form MIL-100 or equivalent at any time during litigation? Is there a requirement that if the form or equivalent information is not submitted within a certain time period, then any future claims are waived? PLC would urge the Court to not enact such a requirement, but instead allow a veteran or servicemember to assert his or her military status at any point during litigation. There are many reasons why a veteran or servicemember may not want to disclose his or her status at one point, but may later change his or her mind.</p> <p>PLC sees some issue with the form MIL-100 being sent to the Veterans Administration and/or the Veterans Service Officer. If the goal</p>	<p>describe those individuals with military service, and has modified the proposal.</p> <p>The committee appreciates this comment and has modified the proposal to include additional language to clarify that the form can be used in any case type and filled out at any time.</p> <p>The committee appreciates this comment but the requirement that the MIL-100 be sent to the Veterans Service office for verification is</p>

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	Commenter	Position	Comment	Committees Response
			to try to connect the veteran to services, we wonder if there is a better way to do that. Or at least, maybe make the sending of the form to the VA or the VSO optional so that the veteran can choose whether or not he or she would like their information shared. There also could be an opportunity to refer the veteran to self-help and legal services organizations, at least for civil legal needs, since this form is specifically used for veterans in court proceedings.	mandated by Penal Code §858 and thus not within the committee's purview to change.
3.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	<p>Do the revisions to the form appropriately address the stated purpose? <b>Yes.</b></p> <p>Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)? <b>The form already identifies different case types in the information section on page 2 of the form. Further identification does not appear to be necessary.</b></p> <p>Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status? <b>Optional.</b></p> <p>Are any additional revisions recommended? <b>No</b></p>	<p>No response required.</p> <p>The committee agrees with this comment and is not seeking to add case type information.</p> <p>The committee has modified the proposal in response to comments received and will not seek to make the form mandatory.</p> <p>No response required.</p>
4.	Superior Court of Los Angeles County By: Bryan Borys	A	The advisory committee also seeks comments from <i>courts</i> on the following cost and implementation matters:	

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	Commenter	Position	Comment	Committees Response
			<ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so, please quantify.  No.</li> <li>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) or revising processes and procedures (please describe)?  New procedure, new case management code, training for clerical, supervisors, Judicial Assistants and Judicial Officers. Training time estimate is 3 hours.</li> </ul> <p>Do the revisions to the form appropriately address the stated purpose?</p> <p>Yes</p> <ul style="list-style-type: none"> <li>• Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)?  Yes, due to multiple case management systems.</li> </ul>	<p>No response required.</p> <p>The committee takes note of these impacts and will include them in the report to the council.</p> <p>No response required.</p> <p>The committee considered this comment but also received feedback that the information currently on the form as to case type is sufficient. Since adding case type information may increase</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Response</b>
			<ul style="list-style-type: none"> <li>Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status?</li> </ul> <p>We believe it should be optional. If it becomes mandatory and an active duty member of the military in an active war zone and they were to notify the court on a handwritten pleading, and not on the mandatory form, would the court accept this notification? If not, would the court be out of compliance with the Servicemember Relief Act which requires that a default judgment not be entered against an active duty litigant?</p> <ul style="list-style-type: none"> <li>Are any additional revisions recommended?</li> </ul> <p>None</p>	<p>implementation costs to the court and require information a litigant may not know, the committee is not recommending adding this information.</p> <p>The federal requirements of the Servicemembers Civil Relief Act preempt state law. Thus if the MIL-100 were to be mandatory, a judge in a local Superior Court must still accept and consider any forms related to the SCRA regardless of whether the litigant has completed the MIL-100. However, after consideration of the expressed concerns and potential for burdens placed on courts and litigants by making the form mandatory, the committee agrees that the form should be kept optional at this time.</p> <p>No response required.</p>
5.	The Executive Committee of the Family Law Section of the California Lawyers Association	A	<p>Do the revisions to the form appropriately address the stated purpose? Yes.</p> <p>Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)? Yes.</p>	<p>No response required.</p> <p>The committee appreciates this input but based on feedback and concerns about increasing implementation costs to the court and the potential</p>

**Winter 20-06**

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committees Response</b>
			<p>Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status? Mandatory.</p> <p>Are any additional revisions recommended? No.</p>	<p>for confusion by litigants, the committee is not recommending adding this information.</p> <p>While the committee agrees that there are significant benefits to making the MIL-100 mandatory, it also understands the concerns expressed by commenters about creating additional requirements for court litigants and imposing burdens on courts. Thus, the committee recommends keeping the form optional.</p> <p>No response required.</p>