



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 21, 2018

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Title	Agenda Item Type
Rules and Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms CIV-140 and CIV-141	January 1, 2019
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	September 11, 2018
Hon. Ann I. Jones, Chair	Contact
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### Executive Summary

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 extension of time if the parties are unable to meet and confer within the time allowed. The Civil and Small Claims Advisory Committee recommends revising two optional forms, one to implement the meet-and-confer requirements and the other to obtain a 30-day extension of time to file a motion to strike a pleading or a motion for judgment on the pleadings if the parties are unable to meet before the due date of the motion.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2019, revise *Declaration of Demurring or Moving Party Regarding Meet and Confer* (form CIV-140) and *Declaration of Demurring or Moving Party in Support of Automatic Extension* (form CIV-141) to add a motion to strike a pleading and a motion for judgment on the pleadings to the items that require a meet-and-confer session before filing in a trial court.

The revised forms are attached at pages 6–7.

## Relevant Previous Council Action

Effective January 1, 2017, the Judicial Council approved optional forms CIV-140 and CIV-141 to implement statutory requirements.

## Analysis/Rationale

Effective January 1, 2016, Code of Civil Procedure section 430.41, which addresses the filing of demurrers, was enacted. It requires that, before filing a demurrer, the demurring party meet and confer with the party who filed the pleading that is subject to demurrer. It also provides that, if the parties are unable to meet and confer at least five days before the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a responsive pleading. The Judicial Council adopted two optional forms to implement these statutory requirements. *Declaration of Demurring or Moving Party Regarding Meet and Confer* (form CIV-140) provides declarations to demonstrate compliance with the meet-and-confer requirements of Code of Civil Procedure section 430.41(a)(3) and *Declaration of Demurring or Moving Party in Support of Automatic Extension* (form CIV-141) provides declarations for a demurring party to use when seeking an automatic 30-day extension of time to file a demurrer.

New legislation enacted in 2017, Assembly Bill 644 (Stats. 2017, ch. 273), added Code of Civil Procedure<sup>1</sup> sections 435.5 and 439, until January 1, 2021, to establish requirements similar to those in section 430.41 that before filing a motion to strike or a motion for judgment on the pleadings, respectively, the moving party must meet and confer with the party who filed the pleading that is subject to the motion to determine if an agreement can be reached that resolves the objections to be raised in the motion.

For a motion to strike, the meet-and-confer session must take place at least five days before the date a motion to strike must be filed. Under section 435(b)(1), a motion to strike must be filed within the time allowed to respond to a pleading. A 30-day extension of time to file the motion is automatically granted by the filing of a declaration seeking the extension no later than the date the motion to strike must be filed.

For a motion for judgment on the pleadings, the meet-and-confer session must occur “at least five days before the date a motion for judgment on the pleadings is filed.” (Code Civ. Proc., § 439(a)(2).) The last date that a motion for judgment on the pleadings may be filed is governed by section 438(e) and is based on when the action was first set for trial and when a pretrial conference order was entered. A 30-day extension of time to file the motion is automatically granted by the filing of a declaration seeking the extension no later than “the date a motion for judgment on the pleadings must be filed.” (*Ibid.*)

The advisory committee recommends revising existing forms CIV-140 and CIV-141 to implement the 2017 legislation. The revised forms would serve the same purposes—a demonstration of compliance with new meet-and-confer requirements and an automatic

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

extension of time for filing—for parties filing a motion to strike a pleading or a motion for judgment on the pleadings, consistent with new sections 435.5 and 439.

***Declaration of Demurring or Moving Party Regarding Meet and Confer (form CIV-140)***

The revised form provides check boxes for the demurring or moving party to indicate to which pleading the party is demurring or moving to strike or moving for judgment on, and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer or motion, whether the meeting was by telephone or in person, and that the parties did not reach an agreement resolving the objections raised in the demurrer or motion; or (2) that the party who filed the pleading failed to respond to a request to meet and confer or otherwise failed to meet and confer in good faith.

In addition, a technical correction would be made to form CIV-140, item 1, which currently reads, “At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer.” Because section 430.41(a) does not require five days between an unsuccessful meet-and-confer session and the filing of a demurrer, item 1 would be revised to begin, “At least five days before the date a responsive pleading was due to be filed.”

***Declaration of Demurring or Moving Party in Support of Automatic Extension (form CIV-141)***

Currently, this form is for a demurring party to state under penalty of perjury that he or she made a good-faith attempt to meet and confer with the party that filed the pleading at least five days before the date the responsive pleading was due. It has been revised to be used by a party moving to strike or moving for judgment on the pleadings to state under penalty of perjury that he or she made a good-faith attempt to meet and confer with the party that filed the pleading at least five days before the date the responsive pleading was due (for a motion to strike) and at least five days before a motion for judgment on the pleadings must be filed.<sup>2</sup> It includes space for the moving party to describe the reasons why the parties could not meet and confer before the initial due date for the responsive pleading or before the motion for judgment on the pleadings must be filed. The extension is automatic, provided the party seeking the extension files a declaration on or before the relevant filing date. (Code Civ. Proc., §§ 435.5(a)(2), 439(a)(2).)

**Policy implications**

The policy implications of this proposal are limited. Holding a meet-and-confer session before filing a motion to strike or a motion for judgment on the pleadings is a statutory requirement.

**Comments**

The proposal circulated for public comment from April 9 to June 8, 2018. Comments were received from the Superior Courts of Riverside and San Diego Counties, the Orange County Bar

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<sup>2</sup> A motion for judgment on the pleadings must be made no later than 30 days after the action was first set for trial, or a pretrial conference order was entered, whichever occurred later. (Code Civ. Proc., § 438(e).)

Association, and the San Bernardino Department of Child Support Services. Three commenters agreed with the proposal and one agreed but suggested modifications.

***Additional information about meet-and-confer session.*** One of the specific questions posed by the advisory committee in the invitation to comment was the following: “With current forms CIV-140 and CIV-141, have courts been receiving sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions? Should the forms be revised to require additional information, such as the amount of time spent in the meet-and-confer session, the number of causes of action discussed, or other detailed information?”

In response to this question, the Superior Court of Riverside County stated that “[i]t seems unlikely that more detail in a meet and confer declaration would be effective in giving the court a better opportunity to assess whether the parties have engaged in a meaningful meet-and-confer process.” By contrast, the Superior Court of San Diego County believes that “it would be great if the form could be revised to require the additional information,” in particular, “the specific causes of action that were discussed and the issues of dispute that were raised related to each of the causes of action.”

The committee discussed these comments and ultimately decided not to modify the form. Some members thought that requiring additional information could lead to posturing during the meet-and-confer sessions and disputes about whether the information was accurate. Though some members thought the additional information would be helpful to judges and provide an overview of the issues in dispute, others thought it would duplicate information contained in the demurrer or motion. Thus, although members noted benefits to requiring additional information on form CIV-140, on balance, the committee concluded that the form should not be revised for this purpose.

***Cost savings.*** The Superior Court of San Diego County stated that although cost savings are unknown, requiring a more detailed discussion of the areas of dispute may assist in resolving them without the need for a demurrer or motion, which would provide cost and time savings for the courts and parties.

***Other comments.*** The San Bernardino Department of Child Support Services indicated “agree if modified” but stated its disagreement with the legislation and forms changes to the extent they apply to public entities. This proposal does not change to whom or what the meet-and-confer requirement applies. In addition, use of the forms to comply with the meet-and-confer requirement is optional; a party filing a demurrer, motion to strike, or motion for judgment on the pleadings may draft its own declarations showing compliance or seeking an extension of time. The committee, therefore, made no changes in response to this comment.

### **Alternatives considered**

The advisory committee considered making no change to the forms but concluded that it was important to revise them to be consistent with the recent statutory changes that expanded the meet-and-confer requirements to apply to motions to strike and motions for judgment on the

pleadings. As discussed above, the committee considered requiring the form declarant to state the specific causes of action that were discussed and the issues of dispute that were raised related to each.

### **Fiscal and Operational Impacts**

The advisory committee believes that any fiscal or operational impacts will be minimal. The forms are optional and provide the necessary information and statements that must be included when a party files a motion to strike or motion for judgment on the pleadings, or seeks an extension to do so. They will help ensure that the moving party provides the necessary information. Courts will incur minor one-time costs and operational impacts in training staff and adding the new forms to case management systems.

### **Attachments and Links**

1. Forms CIV-140 and CIV-141, at pages 6–7
2. Chart of comments, at pages 8–10
3. Link A: Assembly Bill 644,  
at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB644](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB644)

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>  <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff/Petitioner: _____ Defendant/Respondent: _____	
<b>DECLARATION OF DEMURRING OR MOVING PARTY REGARDING MEET AND CONFER</b>	CASE NUMBER: _____

*To the party filing a demurrer, motion to strike, or motion for judgment on the pleadings: This form must be filed with the demurrer, motion to strike, or motion for judgment on the pleadings.*

1. (Name of party making declaration): \_\_\_\_\_ was served with
- a complaint     an amended complaint     a cross-complaint  
 an answer     other (specify): \_\_\_\_\_
- in the above-titled action and is filing a  demurrer     motion to strike     motion for judgment on the pleadings

2. **DECLARATION** (Choose either a. or b.)
- a.  At least five days before the date a responsive pleading was due to be filed (if I am filing a demurrer or motion to strike) or at least five days before filing a motion for judgment on the pleadings (if I am filing a motion for judgment on the pleadings), I met and conferred with the party who filed the pleading  by telephone  in person and we did not reach an agreement resolving the matters raised by the demurrer, motion to strike, or motion for judgment on the pleadings.
- b.  The party who filed the pleading subject to demurrer, motion to strike, or motion for judgment on the pleadings failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

*To provide additional information, please use form MC-031, Attached Declaration.*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

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

\_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY)

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\_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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:		
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:		
<b>DECLARATION OF DEMURRING OR MOVING PARTY</b> <b>IN SUPPORT OF AUTOMATIC EXTENSION</b>		CASE NUMBER:

1. (Name of party): \_\_\_\_\_ was served with

- a complaint   
  an amended complaint   
  a cross-complaint  
 an answer   
  other (specify):

in the above-titled action.

2. For a demurrer or motion to strike, a responsive pleading is due on (date):

**DECLARATION**

I intend to file a demurrer, motion to strike, or motion for judgment on the pleadings in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am responding to at least five days before the date when the responsive pleading is due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure sections 430.41, 435.5, or 439, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading or motion for judgment on the pleadings.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due (if I am filing a demurrer or motion to strike) and at least five days before the last day a motion for judgment on the pleadings may be filed (if I am filing a motion for judgment on the pleadings). I was unable to meet with that party because (the reasons why the parties could not meet and confer are stated):

- below   
  on form MC-031, Attached Declaration

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

\_\_\_\_\_  \_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**SPR18-08****Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer** (Revise forms CIV-140 and CIV-141)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	San Bernardino Department of Child Support Services (SBDCSS) by Marci Jensen-Eldred Loma Linda, CA	AM	San Bernardino Department of Child Support Services (SBDCSS) disagrees with the proposal regarding legislation and forms changes to CIV-140 and CIV-141 and seeks further clarification as to its applicability to State and Local Child Support Agencies. SBDCSS would agree to the proposal if it was modified to clearly identify that the proposal relates directly to private not public individuals or entities.	This proposal does not change to whom or what the statutory meet-and-confer requirements apply. The form is approved for optional, not mandatory use. A party may draft its own declarations to comply with the meet-and-confer requirements. The committee, therefore, did not make any changes in response to this comment.
2.	Superior Court of Riverside County	A	<ul style="list-style-type: none"> <li>Does the proposal appropriately address the stated purpose?</li> </ul> It seems unlikely that more detail in a meet and confer declaration would be effective in giving the court a better opportunity to assess whether the parties have engaged in a meaningful meet-and-confer process.	After discussing this issue, the committee decided not to recommend requiring additional information and details in the declaration concerning the meet-and-confer session.
3.	Superior Court of San Diego County	A	Q: Does the proposal appropriately address the stated purpose?  Yes.  Q: With current forms CIV-140 and CIV-141, have courts been receiving sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions? Should the forms be revised to require additional information, such as the amount of time spent in the meet-and-confer session, the number of causes of action discussed, or other detailed information?	The committee appreciates the comment and responses to specific questions.



**SPR18-08**

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

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Our court has not received sufficient information to determine whether a meaningful meet-and-confer session has been held. Yes, it would be great if the form could be revised to require the additional information. Although the amount of time is not essential, it would be helpful to have the parties provide information regarding the specific causes of action that were discussed and the issues of dispute that were raised related to each of the causes of action.</p> <p>Q: Would the proposal provide cost savings?</p> <p>Unknown. Requiring a more detailed discussion may assist in resolving more disputes about the contents of a complaint without the need of a demurrer or other motion challenging it being filed, which would provide time/cost savings for the court and the parties.</p> <p>Q: 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.</p> <p>Implementation requirements would be minimal. Applicable procedures were</p>	<p>After discussing this issue, the committee decided not to recommend requiring additional information and details in the declaration concerning the meet-and-confer session.</p> <p>The committee thanks the commenter for responding to specific questions. No response is needed.</p>

**SPR18-08****Forms: Declarations of Demurring or Moving Party Regarding Meet and Confer** (Revise forms CIV-140 and CIV-141)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>previously revised to reflect the change in law in Jan. 2018.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>Q: How well would this proposal work in courts of different sizes?</p> <p>It appears that this proposal would work for all courts.</p>	
4.	Orange County Bar Association by Nikki P. Miliband, President Newport Beach, CA	A	No additional comment.	The committee thanks the commenter for responding.