



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on May 17, 2019

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**Title**

Civil Practice and Procedure: Unlawful  
Detainer

**Agenda Item Type**

Action Required

**Effective Date**

September 1, 2019

**Rules, Forms, Standards, or Statutes Affected**

Revise forms SUM-130 and UD-105

**Date of Report**

March 29, 2019

**Recommended by**

Civil and Small Claims Advisory Committee  
Hon. Ann I. Jones, Chair

**Contact**

Susan R. McMullan, 415-865-7990  
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### Executive Summary

Two recent bills added to and amended the Code of Civil Procedure section regarding unlawful detainer actions to expand affirmative defenses and to clarify that the period of time in which a defendant must respond to a summons excludes Saturdays, Sundays, and other judicial holidays. The Civil and Small Claims Advisory Committee recommends revising two forms, *Answer—Unlawful Detainer* (form UD-105) and *Summons—Unlawful Detainer—Eviction* (form SUM-130), to make them consistent with these statutory changes.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective September 1, 2019, revise:

1. *Answer—Unlawful Detainer* (form UD-105) to add a means for a tenant or household member to document acts that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult and to add an affirmative defense, both of which are required by recent legislation; and

2. *Summons—Unlawful Detainer—Eviction* (form SUM-130) to change the description of the time period for responding to an unlawful detainer summons, consistent with recent legislation.

The revised forms are attached at pages 7–10.

### **Relevant Previous Council Action**

The Judicial Council initially approved form UD-105 in 1981 and has subsequently approved various revisions to it. Effective January 1, 2012, the council revised form UD-105 to satisfy a legislative mandate in Code of Civil Procedure section 1161.3 by incorporating a new affirmative defense alleging that plaintiff seeks to evict defendant based on acts that constitute domestic violence, sexual assault, or stalking against a defendant or a member of a defendant’s household. Effective January 2, 2014, in response to a further legislative mandate enacted in 2012, the council revised the same item on form UD-105 to add acts of elder abuse to the list of grounds that could serve as a basis for the new affirmative defense. Prior revisions to form SUM-130 are not relevant to this proposal.

### **Analysis/Rationale**

#### ***Answer—Unlawful Detainer (form UD-105)***

Code of Civil Procedure section 1161.3 provides that a landlord cannot terminate a tenancy or fail to renew a tenancy based on acts that constitute domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult against a tenant or a tenant’s household member. The acts must be documented by a temporary restraining order, protective order, or copy of a peace officer’s written report that is not more than 180 days old. Assembly Bill 2413 (Chiu; Stats. 2018, ch. 190) amended section 1161.3 to provide an alternative form of documentation that is acceptable: documentation from a qualified third party acting in his or her professional capacity to indicate that the tenant or household member is seeking assistance for injuries or abuse resulting from acts of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. This bill also adds subdivision (f) to section 1161.3 to require the Judicial Council, by September 1, 2019, to “develop a new form or revise an existing form that may be used by a party to assert in the responsive pleading the grounds set forth in this section as an affirmative defense to an unlawful detainer action.” This proposal revises *Answer—Unlawful Detainer* (form UD-105) to satisfy that mandate.

In addition, AB 2413 added Code of Civil Procedure section 1946.8 to provide that a landlord cannot impose or threaten to impose penalties on a tenant or resident who exercises the right to summon law enforcement or emergency assistance as, or on behalf of, an abuse victim, a crime victim, or an individual in an emergency. (Code Civ. Proc., § 1946.8(c).) Similarly, it provides that a landlord cannot impose or threaten to impose penalties on a tenant or resident as a consequence of someone who is not a resident or tenant summoning law enforcement or emergency assistance in the same circumstances. (*Ibid.*) In an action for unlawful detainer, a tenant, resident, or occupant may raise as an affirmative defense that the landlord violated this provision. (§ 1946.8(f).) This proposal adds that affirmative defense to form UD-150, allowing a

tenant or resident to assert that an eviction was the result of the tenant’s or resident’s summoning assistance on behalf of an abuse or crime victim or person in an emergency.

The affected form, form UD-105, is an optional Judicial Council form. Item 3 includes several affirmative defenses that can be checked by the defendant in an unlawful detainer case. To comply with AB 2413, the Civil and Small Claims Advisory Committee recommends that the form be revised to:

- Add the following underlined text to item 3i:

Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant’s household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts).

- Add new item 3j, to read as follows:

Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.

With the addition of item 3j, the items that follow in item 3 are relettered.

### ***Summons—Unlawful Detainer—Eviction (form SUM-130)***

Assembly Bill 2343 (Chiu; Stats. 2018, ch. 260) amended Code of Civil Procedure section 1167, effective September 1, 2019, to define the five-day period in which a defendant must respond to an unlawful detainer summons and complaint as excluding Saturday, Sunday, and other judicial holidays. The current summons form, which is a mandatory form, states that a defendant has five *calendar* days, counting Saturday and Sunday, after service of the summons and complaint, to respond.

To make form SUM-130 consistent with SB 2343’s amendment to section 1167, it is revised to state, “You have 5 DAYS, not counting Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff.” The parenthetical statement about calculating the days has been removed from the form.

Though not required by legislation, other changes have been made to make the form easier to read and comprehend: It is split into two columns, separating the English and Spanish text; and information about fee waivers, currently in two places, has been put together under the heading “FEE WAIVER.” The following language has been added and appears on the first line:

“NOTICE! You have been sued. The court may decide against you without your being heard

unless you respond within 5 days.” This notice appeared on the form at one time and similar notices appear on other summons forms.

The space addressing proof of service and for the court seal, clerk’s signature, and notice to the person served have been moved from the first to the second page and placed as the last item on the form. On the current form, these appear at the bottom of first page, between items 3 and 4 (two questions about use of an unlawful detainer assistant), which detract from the flow of the form. Finally, several URLs that are out of date have been corrected.

*Note:* Except for removing the parenthetical statement about calculating days, the Spanish language part of form SUM-130 has not yet be revised.

### **Policy implications**

Though the legislation requiring these revisions may have policy implications—it expands a tenant’s or household member’s affirmative defenses to an unlawful detainer action and provides another means to document actions against the tenant or household member by another, actions that could provide a defense to an unlawful detainer action—the form revisions recommended by the advisory committee do not have independent policy implications.

### **Comments**

This proposal circulated for comment from December 11, 2018, to February 12, 2019. Eleven comments were received. Commenters included legal services organizations, superior courts, a superior court family law facilitator, a local bar association, and individuals who did not provide an organizational affiliation. Three commenters agreed with the proposal, two agreed with the proposal if modified, and the remainder did not indicate a position but suggested changes. One commenter did not agree, but provided only comments that are outside the scope of the proposal. A comment chart is attached at pages 11–30.

### **Answer–Unlawful Detainer (*form UD-105*)**

The legal services organizations—the Family Violence Appellate Project, National Housing Law Project, and Western Center on Law and Poverty—suggested revisions to the wording of item 3i to provide examples of “a qualified third party” whose documentation will show that the tenant or household member sought assistance for injuries or abuse resulting from specified acts. They suggested adding “for example: a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist.” All these examples fit within the definition of “qualified third party” in Code of Civil Procedure section 1161.3(e) and provide the most relevant and common examples. The advisory committee recommends this change, and it has been made to the form. In addition, the same commenters suggested using boldface text for the options for documenting the acts of violence or abuse. This change has been made: the words “a temporary restraining order, protective order, or police report” and “a signed statement from a qualified third party” have been bolded. The legal services organizations that commented also noted that tenants are protected from having a tenancy terminated for a single act of violence or abuse against the tenant or household member and suggested that item 3i on the form be revised to make this clear by changing “acts” to “act.” This change has been made.

The legal services organizations suggested that proposed item 3j, an affirmative defense, be revised to replace “summoning law enforcement” with “calls for police” and to add “for example, ambulances” in parentheses after the words “emergency assistance.” The committee agreed, and item 3j has been revised accordingly.

### **Summons—Unlawful Detainer—Eviction (*form SUM-130*)**

In response to a question in the invitation to comment, one commenter suggested that the proof of service information, notice to the person served, and space for the court seal and clerk’s signature should remain on the first page of the form for ease of use or that the form should be reduced to a single page by removing the questions about use of an unlawful detainer assistant and creating a new form for that purpose. Two superior courts that commented stated that the seal should be moved to the second page, as proposed, and doing so would have no significant impact. The committee has kept the proof of service information, notice to the person served, and space for the court seal and clerk’s signature on the second page. One of the courts asked that the case number be moved directly underneath the file stamp box. The committee discussed this request but thought that it would be better to keep the case number where it is on the existing form, opposite item 1, and to have the notice to the person sued at the top, where it is most prominent.

Several commenters questioned the language stating the required response time on form SUM-130—“You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays”—believing it to be unclear. This is the language used in the statute. One commenter suggested changing it to “Not including Saturdays, Sundays, and court holidays.” Another suggested the words “Not counting Saturdays and Sundays and other court holidays.” The advisory committee considered the suggestions and changed the language to “not counting Saturdays and Sundays and other judicial holidays,” believing it made clear that these days should not be counted when determining the five day deadline.

Several commenters provided Spanish translations of the revisions. Invitations to comment do not include translated versions of forms. All translations occur after the English text of a forms proposal is approved by the Judicial Council, to ensure that the translation is of the approved text and to conserve translation costs.

### **Alternatives considered**

Because the revisions are required by legislation and there is little flexibility in how they are made, the advisory committee did not consider alternatives other than the specific wording of the affirmative defenses and the formatting and organization of some of the items on SUM-130. The committee believes that changes to the format of form SUM-130, though not required, will make it easier to read.

### **Fiscal and Operational Impacts**

The proposal has no operational impacts on courts. If a court provides hard copies of the forms, some costs will be incurred in replacing the forms.

## **Attachments and Links**

1. Forms SUM-130 and UD-105, at pages 7–10
2. Chart of comments, at pages 11–30
3. Link A: Assembly Bill 2413,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2413](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2413)
4. Link B: Assembly Bill 2343,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2343](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2343)

**SUMMONS  
(CITACIÓN JUDICIAL)**

**UNLAWFUL DETAINER—EVICTION  
(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**DRAFT**

**04/25/19**

**Not approved by  
the Judicial Council**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, not counting Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff.

A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services website ([www.lawhelpca.org](http://www.lawhelpca.org)), the California Courts Online Self-Help Center ([www.courts.ca.gov/selfhelp](http://www.courts.ca.gov/selfhelp)), or by contacting your local court or county bar association.

**FEE WAIVER:** If you cannot pay the filing fee, ask the clerk for a fee waiver form. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*¡AVISO! Usted ha sido demandado. Si no responde dentro de 5 días, el tribunal puede emitir un fallo en su contra sin una audiencia. Una vez que le entreguen esta citación y papeles legales, solo tiene 5 DÍAS, sin contar sábado y domingo y otros días feriados del tribunal, para presentar una respuesta por escrito en este tribunal y hacer que se entregue una copia al demandante.*

*Una carta o una llamada telefónica no lo protege. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no presenta su respuesta a tiempo, puede perder el caso por falta de comparecencia y se le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados local.*

**EXENCIÓN DE CUOTAS:** Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos con un gravamen sobre cualquier cantidad de \$10,000 ó más recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desestimar el caso.

1. The name and address of the court is:  
(El nombre y dirección de la corte es):

CASE NUMBER (número del caso):

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

PLAINTIFF (Name):	CASE NUMBER:
DEFENDANT (Name):	

3. (Must be answered in all cases) An **unlawful detainer assistant (Bus. & Prof. Code, §§ 6400–6415)**  did not  did for compensation give advice or assistance with this form. (If plaintiff has received **any** help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

4. **Unlawful detainer assistant** (complete if plaintiff has received any help or advice for pay from an unlawful detainer assistant):

- a. Assistant's name:
- b. Telephone no.:
- c. Street address, city, and zip:
  
- d. County of registration:
- e. Registration no.:
- f. Registration expires on (date) :

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy  
 (Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
 (Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (form POS-010).)

[SEAL]

5. **NOTICE TO THE PERSON SERVED:** You are served

- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (specify):
- c.  as an occupant.
- d.  on behalf of (specify):  
 under:  CCP 416.10 (corporation).  CCP 416.60 (minor).  
 CCP 416.20 (defunct corporation).  CCP 416.70 (conservatee).  
 CCP 416.40 (association or partnership).  CCP 416.90 (authorized person).  
 CCP 415.46 (occupant).  other (specify):
- e.  by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR ( <i>name</i> ): <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	STATE BAR NUMBER:  STATE:                      ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i>  <b>DRAFT</b>  <b>03-18-19</b>  <b>Not approved by the Judicial Council</b>
Plaintiff: Defendant:		
<b>ANSWER—UNLAWFUL DETAINER</b>		CASE NUMBER:

1. Defendant (*each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs*):

answers the complaint as follows:

2. **Check ONLY ONE of the next two boxes:**

- a.  Defendant generally denies each statement of the complaint. (*Do not check this box if the complaint demands more than \$1,000.*)
- b.  Defendant admits that all of the statements of the complaint are true EXCEPT
- (1) defendant claims the following statements of the complaint are false (*state paragraph numbers from the complaint or explain below or on form MC-025*):  Explanation is on MC-025, titled as Attachment 2b(1).
- (2) defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (*state paragraph numbers from the complaint or explain below or on form MC-025*):  Explanation is on MC-025, titled as Attachment 2b(2).

3. AFFIRMATIVE DEFENSES (**NOTE:** *For each box checked, you must state brief facts to support it in item 3l (page 2).*)

- a.  (*Nonpayment of rent only*) Plaintiff has breached the warranty to provide habitable premises.
- b.  (*Nonpayment of rent only*) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.
- c.  (*Nonpayment of rent only*) On (*date*): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.
- d.  Plaintiff waived, changed, or canceled the notice to quit.
- e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.
- f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or the laws of the United States or California.
- g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (*city or county, title of ordinance, and date of passage*):  
(*Also, briefly state in item 3l the facts showing violation of the ordinance.*)
- h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- i.  Plaintiff seeks to evict defendant based on an act against defendant or a member of defendant's household that constitutes domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult. (*This defense requires one of the following: (1) a temporary restraining order, protective order, or police report that is not more than 180 days old; OR (2) a signed statement from a qualified third party (e.g., a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist) concerning the injuries or abuse resulting from these acts.*)

CASE NUMBER: \_\_\_\_\_

3. AFFIRMATIVE DEFENSES (cont'd.)

- j.  Plaintiff seeks to evict defendant based on defendant or another person calling the police or emergency assistance (e.g., ambulance) by or on behalf of a victim of abuse, a victim of crime, or an individual in an emergency when defendant or the other person believed that assistance was necessary.
- k.  Other affirmative defenses are stated in item 3l.
- l. Facts supporting affirmative defenses checked above (*identify facts for each item by its letter below or on form MC-025*):
  - Description of facts is on MC-025, titled as Attachment 3l.

4. OTHER STATEMENTS

- a.  Defendant vacated the premises on (*date*):
- b.  The fair rental value of the premises alleged in the complaint is excessive (*explain below or on form MC-025*):
  - Explanation is on MC-025, titled as Attachment 4b.
- c.  Other (*specify below or on form MC-025 in attachment*):
  - Other statements are on MC-025, titled as Attachment 4c.

5. DEFENDANT REQUESTS

- a. that plaintiff take nothing requested in the complaint.
- b. costs incurred in this proceeding.
- c.  reasonable attorney fees.
- d.  that plaintiff be ordered to (1) make repairs and correct the conditions that constitute a breach of the warranty to provide habitable premises and (2) reduce the monthly rent to a reasonable rental value until the conditions are corrected.
- e.  Other (*specify below or on form MC-025*):
  - All other requests are stated on MC-025, titled as Attachment 5e.

6. Number of pages attached: \_\_\_\_\_

**UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, §§ 64000-6415)**

7. (*Must be completed in all cases.*) An **unlawful detainer assistant**  did not  did for compensation give advice or assistance with this form. (*If defendant has received any help or advice for pay from an unlawful detainer assistant, state*):

- a. assistant's name:
- b. telephone number:
- c. street address, city, and zip code:
- d. county of registration:
- e. registration number:
- f. expiration date:

(*Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.*)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
(SIGNATURE OF DEFENDANT OR ATTORNEY)

**VERIFICATION**

(*Use a different verification form if the verification is by an attorney or for a corporation or partnership.*)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF DEFENDANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form

Save this form

Clear this form

**W19-04**

**Civil Practice and Procedure: Unlawful Detainer** (forms SUM-130 and UD-105)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Lloyd Castles Modesto, CA	AM	<p>Specifically addressing the proposed changes to Form Sum-130, I believe the changes to the statutory notification to the defendant is consistent with, and in full compliance with the intent and specifications of AB 2343. I also like the separation of the English/Spanish interpretations and the re-introduction of the “Notice you have been sued” language. These changes should create a more intensive scrutiny and understanding of the advisements by the defendants, especially the Hispanic litigants.</p> <p>The one concern that I have is the movement of the lower portion of the form to the second page. I believe that to be a counterproductive amendment. I am concerned that the movement of the court’s seal, clerks signature, and “notice to the person served” to the second page may prove to be procedurally inefficient to a deputy clerk and a process server if the document is presented in a front side/back side form. Since the normal rule calls for the summons to “tumble” the clerk would have to reverse all of the documents in order to conform and seal the form. It’s rather a small inconvenience, but when you are doing it over and over again, it could become an annoyance.</p> <p>The potential affect on a process server is more pronounced, since they are responsible for adding a date when possible to the “Notice to the Person Served”. Sometimes, the demeanor and/or actions of the person being served do not allow for the time to enter that date, and</p>	<p>The committee appreciates the comments.</p> <p>The committee considered this and decided to leave the seal, clerk’s signature, and notice to the person served remain on page 2, where it was located when the form circulated for comment. The committee noted that courts that responded to the invitation to comment did not expect any significant impact from this change and thought that the seal should be moved to the second page as proposed.</p>

**W19-04**

**Civil Practice and Procedure: Unlawful Detainer** (forms SUM-130 and UD-105)

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

	Commentator	Position	Comment	Committee Response
			<p>effectually that omission does not affect the validity of the service as provided for in CCP45.10. Since most servers and law offices staple the summons on top of the complaint, the server would now have to turn up the page, reverse it to add the date and then provide it to the defendant. That may prove to be more problematic than having that information on the front page.</p> <p>Actually, I question the entire need for a second page. With the removal of the old proof of service which existed on the back side of summons forms, the Civil Summons has evolved into a single sided, efficient document, especially in light of the move to E-Filing and scanning of case documents. However the Sum-103 form has been forced to a second page due to the Unlawful Detainer assistant declaration. Cases filed by pro-per plaintiffs are the specific target of that declaration, whereas that information is virtually redundant to an attorney-filed matter. My suggestion for that would be to keep the declaration that exists in #3 on the Sum-130 Form, only create a second form to be filed if the answer indicates an Unlawful Detainer Assistant was used. This would be similar to the additional forms requirements of small claims cases, i.e. SC-109, SC 103. etc. The amount of extra forms filed would be relatively low, and if properly condensed, the Sum-130 could be a single sided form. Such simplicity would eliminate the need</p>	<p>The committee discussed this and did not think that the form should be reduced to one page by moving the question as to whether an Unlawful Detainer Assistant was used to a different form. In addition, this is outside the scope of the proposal and would need to be circulated for comment if a new form were created.</p>

**W19-04****Civil Practice and Procedure: Unlawful Detainer** (forms SUM-130 and UD-105)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>to create separate copies of that second page for E-Filing, copying and scanning.</p> <p>The amendments required to the answer form accomplish the intended goal and will provide affected defendants with the new affirmative defenses, and I agree with those changes without objection.</p>	
2.	Community Legal Services by Jason Tarricone Directing Attorney, Housing Program East Palo Alto, CA	NI	<p>The following comments are submitted by Community Legal Services in East Palo Alto regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law.</p> <p>[The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law &amp; Poverty.]</p>	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
3.	Family Violence Appellate Project (FVAP) by Taylor Campion, Attorney Housing and Employment Justice Attorney	NI	<p>The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law.</p> <p>[The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law &amp; Poverty.]</p>	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.

**W19-04****Civil Practice and Procedure: Unlawful Detainer** (forms SUM-130 and UD-105)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Legal Aid Association of California (LAAC) by Salena Copeland, Executive Director Oakland, CA	NI	I am writing on behalf of the Legal Aid Association of California (LAAC) regarding the Judicial Council’s (“Council”) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law.  [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
5.	Legal Services of Northern California By Alisha Saska Staff Attorney Woodland, CA	NI	Overall, LSNC supports the proposed changes to both forms UD-105 and SUM-130. However, LSNC believes some language and phrasing on both forms should be updated to make the forms more accessible to pro per litigants.  [The remainder of the comment is substantially the same as the comment from the National Housing Law Project, Western Center on Law & Poverty.]	See response to commenter #7, National Housing Law Project, Western Center on Law & Poverty.
6.	Cristina Llop Family Law Facilitator Superior Court of Mendocino County Ukiah, CA	AM	(1) I am unclear on this language: "The court may decide against you without your being heard unless you respond within 5 days. You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff." I am assuming in essence this means a defendant has 5 court days to respond and the hesitation to use "court days"	The commenter’s interpretation of the language is correct. The day the response is due cannot be a Saturday, Sunday, or holiday, as those days are excluded—or “not included” —in the calculation of the time period for filing and serving a response.

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			<p>vs. "calendar days" is based on plain language? When showing this to some litigants, they have interpreted as saying that the 5th day cannot be a Saturday, Sunday, or holiday.</p> <p>(2) Propose changing "excluding Saturdays and Sundays and other judicial holidays" to "NOT including Saturdays, Sundays, and court holidays" for plain language purposes.</p> <p>3) Assuming the Spanish will be finalized after the English is? Currently, the Spanish text is different from the English.</p>	<p>The committee discussed using different language and decided to change the language to “not counting Saturdays and Sundays and other judicial holidays.”</p> <p>Yes,</p>
7.	National Housing Law Project Western Center on Law & Poverty by Kara Brodfuehrer Staff Attorney San Francisco, CA	NI	<p>The following comments are submitted by the National Housing Law Project (NHLP), Western Center on Law and Poverty, and other housing advocates regarding the Judicial Council’s (Council) Invitation to Comment concerning proposed changes to forms UD-105 and SUM-130 to reflect recent changes to state law.</p> <p><u>Form UD-105</u></p> <p>We recommend that both of the defenses (Items 3i and 3j) on the updated Answer form be revised to include simpler words and phrases that would be accessible to a broader audience.</p>	

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			<p>Defendants in unlawful detainer cases have only five days to file a responsive pleading, and many lack resources to pay for an attorney. As a result, many defendants complete Answer forms without legal assistance. Failing to check a box on this form can result in a vulnerable family becoming homeless; it is vitally important that the Answer use clear and simple language so that these litigants have a fair opportunity to assert all relevant defenses.</p> <p>A. Comments Regarding Item 3i</p> <p>The Council should revise the language of Item 3i so that court users, particularly those who are not represented by counsel, can better understand the defense as well as the documentation options. We include recommended revisions to Item 3i at the end of this section.</p> <p><i>Statute includes single acts of abuse or violence.</i> California law protects tenants from landlords who seek to “terminate a tenancy or fail to renew a tenancy based upon an act or acts against a tenant or a tenant’s household member” that constitute domestic violence, sexual assault, stalking, human trafficking, and elder/dependent adult abuse.<sup>1</sup> The reference to only “acts” may result in the mistaken belief that multiple acts of violence or abuse are required to be entitled to the defense. The statute clearly intends for the eviction defense to</p>	



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			<p>apply in a single instance of violence or abuse. Thus, the form should use the phrase “an act” as opposed to “acts” to ensure users understand that they are entitled to the eviction protection in the context of a single act of violence or abuse.</p> <p><i>Documentation from a qualified third party.</i> Since many users of Form UD-105 will be individuals who lack legal representation, the proposed use of the term “qualified third party,” while reflective of the statutory language, is not a commonly used term that would be familiar to unrepresented litigants. Therefore, it is important for the form to, at minimum, provide several examples of what types of professionals are included by the term “qualified third party.” Section 1161.3 of the Code of Civil Procedure defines “qualified third party” as “a health practitioner, domestic violence counselor,...a sexual assault counselor,...or a human trafficking caseworker.”<sup>2</sup> Furthermore, the statute defines “health practitioner” to include “a physician and surgeon, osteopathic physician and surgeon, psychiatrist, psychologist, registered nurse, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor.”<sup>3</sup> In the recommended text below, we include several examples of these types of professionals to reference on Form UD-105.</p>	<p>The committee agrees and has made this change.</p>

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			<p>1 Code Civ. Proc. § 1161.3 (a) (emphasis added).</p> <p>2 Code Civ. Proc. § 1161.3(e)(3).</p> <p>3 Code Civ. Proc. § 1161.3(e)(2).</p> <p><i>Recommended language.</i> Based on the reasons outlined above, we recommend the following text for Item 3i. For the ease of the reader, we also recommend the use of bolded text to identify the options for documentation as noted below.</p> <p>Plaintiff seeks to evict defendant based on an act of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse committed against the defendant or the defendant’s household member. (NOTE: Requires one of the following: (1) <b>a temporary restraining order, protective order, or police report</b> that is not more than 180 days old; OR (2) <b>a signed statement from a qualified third party</b> [for example: a doctor, domestic violence or sexual assault counselor, human trafficking caseworker, or psychologist]).</p> <p>B. Comments Regarding Item 3j</p> <p>We strongly believe that no tenant should have to face the impossible choice between seeking police or emergency assistance, and losing their home. The Council should revise proposed Item</p>	<p>The committee agrees and has added examples of qualified third parties and has bolded the key language on what documentation is required.</p>

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			<p>3j so that court users, particularly pro per tenants, can better understand this new eviction defense. This includes simplifying the language used.</p> <p>Accordingly, we recommend the following text for Item 3j:</p> <p>Plaintiff seeks to evict defendant in response to one or more calls for police or emergency assistance [for example: ambulances] by or on behalf of a victim of abuse, victim of crime, or a person in an emergency when there was a belief assistance was necessary.</p> <p><u>Form SUM-130</u></p> <p>We recommend that the Council slightly alter the new language regarding SB 2343 to make it easier for tenants to understand. The proposed text of the English language portion of the form reads as follows:</p> <p>You have 5 DAYS, excluding Saturdays and Sundays and other judicial holidays, after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff.</p> <p>To make this language more accessible to most litigants, the proposed text should be modified as follows:</p>	<p>The committee agrees and has made this change.</p>

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			<p>You have 5 DAYS, not counting Saturdays and Sundays and other court holidays, to file a written response at this court after you receive this summons and legal papers.</p> <p>We also strongly encourage the Council to change the Spanish portion of the summons form to accurately state the law. The Council’s failure to make this change is particularly surprising given that the effective date of AB 2343 was extended at the request of the Judicial Council to allow for form updates. Failure to modify the Spanish text of the form may lead Spanish-speaking defendants to believe their time to answer a complaint has passed, leading to default judgments for failure to respond despite there still being time to do so. No litigant’s rights to defend their home should be impacted by the courts’ failure to provide accurate information in their language.</p> <p>The current text of the Spanish language portion of the form reads as follows:</p> <p>Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los</p>	<p>The committee discussed this and decided to change “excluding Saturdays and Sundays and other judicial holidays” to “not counting Saturdays and Sundays and other judicial holidays.”</p> <p>Changes will be made so that the Spanish language part of the form matches the English part.</p>

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			<p>otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito).</p> <p>To align with the proposed changes to the English text of the form and accurately state the law, and to incorporate our suggestions, the Spanish text should be modified as follows (insertions in italics, deletions in <del>strikethrough</del>):</p> <p>AVISO! Tiene 5 DÍAS <del>DE CALENDARIO</del>, no contando sábado, domingo y días festivos de la corte, para presentar una respuesta por escrito en esta corte, después de que reciba esta citación y documentos legales. <del>(Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito).</del></p> <p>In addition, the “Fee Waiver” language is set off in a separate box for the English section on the Summons. The fee waiver section on the Spanish section of the form should also be set apart in a box to make it easier to read.</p> <p>Finally, there are several minor changes that would make this important form easier to understand. First, to ensure that litigants see the language at the top of the box informing them of</p>	

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			<p>the time during which they must respond, we encourage the Council to set off the first two sentences, in English and in Spanish, by using bold font. To improve readability of this form, we also suggest breaking up the text in the English and Spanish boxes to three paragraphs rather than two long paragraphs. We suggest a break between the sentences “Your response must be in the proper legal form” and “There may be a court form...” On the Spanish side, the break would appear between “Su respuesta por escrito tiene que estar...” and “Es posible que...”</p> <p>These paragraphs should be broken down into smaller sections organized by topic and each section should have its own heading. For example:</p> <p>1) NOTICE!</p> <p>This paragraph should contain the basic information about what SUM-130 is and when the defendant’s responsive pleading is due.</p> <p>2) WHAT YOU SHOULD DO:</p> <p>This paragraph should contain the advisory to seek legal assistance immediately and the information about how a response must be filed.</p> <p>3) WHERE TO GO FOR HELP:</p>	

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			<p>This paragraph should advise defendants to seek assistance in person at the court’s self-help center or online.</p> <p><u>General Changes to Both Forms</u></p> <p>We also recommend making some further changes to both forms to increase their readability and accessibility for litigants with limited English proficiency and limited literacy skills. We recommend the following:</p> <ul style="list-style-type: none"> <li>□ <u>Avoid long sentences with many clauses separated by commas.</u> Although this type of sentence structure is common in legal writing, it often leads to confusion and misunderstanding for people without a legal background. These sentences should be broken down into separate, shorter sentences.</li> <li>□ <u>Break up long paragraphs of dense text into smaller sections.</u> Individuals with limited English proficiency and limited literacy skills often struggle to read and comprehend long sections of prolix text.</li> <li>□ <u>Use a variety of text formatting options throughout the forms.</u> Individuals with limited English proficiency or limited literacy skills would be able to understand and appropriately utilize the forms if the key words/phrases and instructions stood out from the rest of the text using italics, <b>bold font</b>, underlining, larger font size, ALL CAPS, and creative combinations</li> </ul>	<p>The committee appreciates the comments and agrees that form readability is important. There is no plain language version of this form and the suggestions are outside the scope of this proposal.</p>

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			<p>thereof. For example, to ensure that litigants see the language at the top of the box informing them of the time during which they must respond, we encourage the Council to set off the first two sentences, in English and in Spanish, by using <b>bold</b> font.</p> <p>We also encourage the Council to revise the entire UD-105 entirely to make it more accessible in form and content to pro per litigants. UD-105 should be drafted in a manner similar to the forms used in Small Claims cases and petitions for Restraining Orders. Those forms use simple language that a party with limited formal education is likely to understand. The language should be accessible for a party with a 7th or 8th grade reading level to understand. Visually, UD-105 should be structured to support reading comprehension for those with limited literacy skills. It should contain ample blank spaces for parties to fill in facts necessary to support their defenses.</p> <p>Nationwide and California-specific statistics show that landlord/tenant matters are one of the most common legal substantive areas to have self-represented litigants.<sup>4</sup> While self-help centers and legal services are able to assist some of these litigants, lack of resources and capacity (and the expedited timeline of eviction proceedings) leave many tenants in the position of preparing answers to unlawful detainers on</p>	



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			<p>their own. This leaves these litigants vulnerable to making procedural mistakes that could (unnecessarily) lead to the loss of a place to live. Accordingly, we strongly urge the Council to create an information sheet as a companion to UD-105, in order to assist tenants in the preparation, filing, and service of unlawful detainer answers. Similar information sheets are already available for other substantive areas with large volumes of pro se litigants including family law matters. (See e.g., DV-505-INFO; DV-520-INFO; FL-300-INFO).</p> <p>We are part of a larger network of California housing advocates that would be willing and eager to engage in a broader conversation about the accessibility of court forms that are of crucial importance to tenants across the state. It is our sincere hope that this is the beginning of a longer dialogue about ways in which the California courts can be more accessible to tenants, particularly those tenants who represent themselves.</p> <p>4 The Self-Help Center Census:A National Survey, American Bar Association Standing Committee on the Delivery of Legal Services (August 2014); California Courts Self-Help Centers Report to the California Legislature (June 2007) (available at: <a href="http://www.courts.ca.gov/documents/rpt_leg_self_help.pdf">www.courts.ca.gov/documents/rpt_leg_self_help.pdf</a>).</p>	

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8.	Orange County Bar Association by Deirdre Kelly, President Newport Beach, CA	A	The revised forms are clear and accurately reflect the statutory affirmative defenses. The forms clarify calendaring issues with respect to the due date of a responsive pleading (i.e. eliminating weekends and holidays from 5 day period).	No response needed.
9.	Superior Court of Los Angeles County Los Angeles, CA	A	<ul style="list-style-type: none"> <li>• <b>Does the proposal appropriately address the stated purpose?</b>  Yes.</li> <li>• <b>The space addressing proof of service and for the court seal, clerk's signature, and notice to the person served have been moved to the second page and placed as the last item on the form. Should this remain on the first page of the form and, if so, why?</b>  No significant impact expected due to this change.  The advisory committee also seeks comments from courts on the following cost and implementation matters:</li> <li>• <b>Would the proposal provide cost savings? If so, please quantify.</b>  No cost savings have been identified at this point.</li> </ul>	The committee appreciates the response to specific questions and thanks the commenter.

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			<ul style="list-style-type: none"> <li>• <b>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?</b></li> </ul> <p>Implementation will require training clerical and supervisory staff, revising procedures and modifying case management system.</p> <p><b>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>No, at least 6 months would be needed to fully implement.</p>	
10.	Superior Court of San Diego County by Mike Roddy Court Executive Officer San Diego, CA	A	<p><b>Q: Does the proposal appropriately address the stated purpose?</b></p> <p>Yes.</p> <p><b>Q: The space addressing proof of service and for the court seal, clerk’s signature, and notice to the person served have been moved to the second page and placed as the last item on the form. Should this remain on the first page of the form and, if so, why?</b></p>	The committee appreciates the response to specific questions and thanks the commenter.

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			<p>No, the seal should be moved to the second page as proposed. However, it is requested based on the new layout of the form that the case number be moved directly underneath the file stamp box.</p> <p><b>Q: Would the proposal provide cost savings? If so, please quantify.</b></p> <p>No.</p> <p><b>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?</b></p> <p>Training staff (business office and courtroom clerks), updating local packets, case management system, and internal procedures.</p> <p><b>Q: Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b></p> <p>Yes.</p> <p><b>Q: How well would this proposal work in courts of different sizes?</b></p> <p>It appears that the proposal would work for courts of all sizes.</p>	<p>The committee left the seal on the second page as proposed and kept the case number where it appears on the existing form across from the court name and address. The committee believes that the information to the person sued should be first and therefore above the case number.</p>

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11.	Theresa Williams Pasadena, CA	N	The unlawful detainer process violates due process rights of the people and helps third party debt collectors cover up a fraudulent financial and rent skimming scheme that traffics victims in debt slavery for a unsecured loan that was issued to a fictitious alias borrower. Deeds of Trust ("DOT") appearing for Real Estate and recorded in the County Recorder's Office are not for immovable property as in land and building but for Tangible Personal Property as in moveable. The DOT is indexed and an examiner did not verify the type of property involved (real estate, immovable or moveable and did not claim it to be secured and or unsecured. (To obtain that answer, you will need to ask the tax assessor) It is presumed that the recording was perfected but the notary public only verifies the signatures but not the content of the DOT which is a contract not for a mortgage but for the asset of Tangible personal property other than real estate that has value. The DOT does not place a lien on real estate, land and building, immovable property and the trustee who indexes a notice of default and trustee sale has knowledge that the DOT is unsecured and holds a trustee sale selling the DOT to a third party purchaser who doesn't report the consideration and is exempt from paying taxes because the purchase was under \$25,000. The third party purchaser moves for an unlawful detainer hoping to trick the homeowner into believing the DOT is for real	The comment is outside the scope of the proposal and the committee, therefore, has no response.

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			estate immovable property and knowing that its authority and asset is tangible personal property. The courts assist in concealing the scheme by processing the defaults or judgments and identifying the property as real estate but it does not identify the property as immovable or moveable. When a writ for possession is issued, the Sheriff's (contracted and under Admiralty Jurisdiction) are to remove the tangible personal property which is moveable but presumes the writ involves land & building and threatens the occupants (the actual owners) to leave. At no time was proof provided to the court revealing the holder in due course of the contract involving real estate, land and building, immovable property AND if the homeowner puts in a motion for proof of a payoff to the holder or any information relating to the foreclosure, they are denied due process.	