



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-163

For business meeting on: September 20, 2022

Title

Rules and Forms: Language Referring to
Persons with Disabilities

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 8.482,
8.483, and 8.631; revise form APP-060

Date of Report

September 2, 2022

Recommended by

Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Contact

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Executive Summary

The Appellate Advisory Committee recommends updating language in several rules and a form to reflect guidelines for referring to persons with disabilities, preferences within the disability community, and terminology changes in California statutes. The committee also recommends correcting several subdivision headings in one of the rule's advisory committee comments.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2023:

1. Amend California Rules of Court, rules 8.482, 8.483, and 8.631 to replace outdated language describing persons with disabilities with updated “person-first” language; and
2. Revise form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*, to update the language describing persons in civil commitment proceedings, reflecting the amendments to rule 8.483.

The proposed amended rules and revised form are attached at pages 6–9.

Relevant Previous Council Action

Rule 8.482, Appeal from judgment authorizing conservator to consent to sterilization of conservatee, was adopted in 2005 as rule 39.1. It was amended and renumbered as rule 8.482 in 2007. It was amended again effective January 1, 2016, as part of a rules modernization project. The amendments have no bearing on this proposal.

Rule 8.483, Appeal from an order of civil commitment, was adopted, and form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*, was approved for optional use, effective January 1, 2020, to assist litigants and the courts in civil commitment appeals. The rule and form have not been modified since their effective date.

Rule 8.631, Applications to file overlength briefs in appeals from a judgment of death, was adopted in 2008. It has not previously been amended.

Analysis/Rationale

In 1990, the federal government passed the Americans with Disabilities Act (ADA),¹ which prohibits discrimination against individuals with disabilities in all areas of public life. The ADA National Network (ADANN) consists of 10 regional centers that provide information, guidance, and training on implementing the ADA.² The ADANN has published *Guidelines for Writing About People With Disabilities*,³ which encourages the use of language consistent with the principles of the ADA, including “portraying individuals with disabilities in a respectful and balanced way by using language that is accurate, neutral and objective.”⁴

The guidelines provide that, generally, the person should be referred to first and the disability second: “People with disabilities are, first and foremost, people. Labeling a person equates the person with a condition and can be disrespectful and dehumanizing. A person isn’t a disability, condition or diagnosis; a person *has* a disability, condition or diagnosis. This is called Person-First Language.”⁵ For example, instead of writing that a person is “mentally ill,” write that a person “has a mental health condition”; instead of “[t]he disabled,” write “[p]eople with disabilities.”⁶ The committee notes that, as described in the guidelines and discussed in the Comments section of this report, “person-first” language is not the only approach, but is appropriate for the proposed updates herein.

¹ 42 U.S.C. § 12101 et seq.

² See ADA National Network, <https://adata.org/national-network>.

³ The guidelines may be accessed at <https://adata.org/factsheet/ADANN-writing>.

⁴ ADA National Network, *Guidelines for Writing About People With Disabilities*, p. 1.

⁵ *Ibid.*

⁶ See Kathie Snow, *To Ensure Inclusion, Freedom, and Respect for All, It’s Time to Embrace People First Language* (2009), p. 4, www.inclusioncollaborative.org/docs/Person-First-Language-Article_Kathie_Snow.pdf.

Over time, the California Legislature has updated the state’s codes to remove “offensive or stigmatizing language referring to mental health disorders.”⁷ In 2019, the Legislature replaced terms used in the Penal Code to describe mental health conditions and individuals with mental health conditions.⁸ Specifically, references to a person as a “mentally disordered offender”⁹ were changed to “offender with a mental health disorder.”¹⁰ Also, the phrase “a person who is incompetent as a result of a mental disorder, but is also developmentally disabled” was changed to “a person who is incompetent as a result of a mental disorder, but also has a developmental disability.”¹¹ In 2012, references to “a mentally retarded person” were replaced with “a person with an intellectual disability.”¹²

The committee recommends removing outdated and disfavored terms in several rules and a form and replacing them with current and more respectful terms. Modernizing the language of these rules and the form is also consistent with *The Strategic Plan for California’s Judicial Branch*, specifically the goals of Access, Fairness, and Diversity (Goal I) and Quality of Justice and Service to the Public (Goal IV).¹³

Rule 8.482, which governs appeals from a judgment authorizing a conservator to consent to sterilization of a conservatee, contains the term “developmentally disabled adult conservatee.” This would be replaced with “adult conservatee with a developmental disability.”

Rule 8.483, regarding appeals from an order of civil commitment, contains the term “mentally disordered offenders.” This would be replaced with “offenders with mental health disorders.” The rule also refers to “developmentally disabled persons,” citing Welfare and Institutions Code section 6500. The committee proposes replacing this term with “dangerous persons with developmental disabilities” to update the language and track the statutory commitment criteria.¹⁴ The same changes would be made to form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*.

An advisory committee comment to rule 8.631, which addresses applications to file overlength briefs in appeals from a judgment of death, includes “whether the defendant is mentally retarded” as an example of unusual, factually intensive, or legally complex hearings. The

⁷ Assem. Jud. Com., Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Mar. 21, 2019, p. 1.

⁸ See Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Apr. 24, 2019, p. 1.

⁹ See former Pen. Code, § 2960 et seq.

¹⁰ Pen. Code, § 2962(d)(3), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 7).

¹¹ Pen. Code, § 1367(b), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 4).

¹² Pen. Code, § 2962(a)(2) (Stats. 2012, ch. 448, § 43); Welf. & Inst. Code, § 6513 (Stats. 2012, ch. 457, § 55).

¹³ The strategic plan may be accessed at www.courts.ca.gov/3045.htm.

¹⁴ See Welf. & Inst. Code, § 6500(b)(1).

committee proposes replacing this language with “whether the defendant has an intellectual disability.”¹⁵

In addition, the committee proposes correcting several subdivision headings in the advisory committee comment to rule 8.631 that are labeled incorrectly:

- “Subdivision (c)(1)(A)” would be corrected to “Subdivision (c)(1).”
- “Subdivision (c)(1)(E)” would be corrected to “Subdivision (c)(5).”
- “Subdivision (c)(1)(E)–(I)” would be corrected to “Subdivision (c)(5)–(8).”
- “Subdivision (c)(1)(I)” would be corrected to “Subdivision (c)(7),” and the phrase “whether the defendant may represent himself or herself” would be replaced with “whether the defendant may be self-represented” to remove gendered pronouns.

Policy implications

As noted above, removing outdated and disfavored terms in several rules and a form and replacing them with current and more respectful terms is consistent with *The Strategic Plan for California’s Judicial Branch*, specifically the goals of Access, Fairness, and Diversity (Goal I) and Quality of Justice and Service to the Public (Goal IV). The proposed changes were not controversial or the subject of debate within the committee.

Comments

This proposal circulated for public comment between April 1 and May 13, 2022, as part of the regular spring comment cycle. The committee received three comments from the Superior Court of Orange County, the California Lawyers Association Committee on Appellate Courts, Litigation Section (CAC), and the Disability Rights Education & Defense Fund (DREDF), all in support of the proposed changes. A chart with the full text of the comments received and the committee’s responses is attached at pages 10–13.

The CAC agreed that the proposal “appropriately addresse[d] its stated purpose of portraying individuals with disabilities in a more respectful way by using ‘Person First Language’ that recognizes a person is not a disability, condition, or diagnosis.” The Superior Court of Orange County agreed with the proposed changes but did not provide further comment.

In supporting the proposal, DREDF noted that, although generally preferred, “person-first” disability language is not universally preferred by the individuals and disability groups comprising the disability community. Rather, “identity-first” language is an increasingly popular alternative, particularly for certain disability groups. Disability communities that prefer “identity-

¹⁵ As noted above, “intellectual disability” replaced the outdated term “mental retardation.” (Stats. 2012, ch. 457, § 1.) This is distinguished from a developmental disability, which is both broader, in that it includes other disabilities such as autism spectrum disorders and epilepsy, and narrower, in that it must have begun before the person reached 18 years of age. (Welf. & Inst. Code, § 4512(a)(1).)

first” language include blind people (not “individuals with blindness” or “individuals with visual impairments”), Deaf people or Deaf/deaf and hard of hearing people, and autistic and neurodivergent people. DREDF also pointed out that “many emerging and younger leaders in the disability movement prefer the identity-first ‘disabled person’ over the person-first ‘person with a disability.’ ” In addition to providing information on current language trends and alternatives, DREDF agreed that the amended language is appropriate and meets the goals of the proposal.

Alternatives considered

The committee did not consider taking no action because the language in these rules and the form is outdated and inconsistent with the guidelines, statutory language, and judicial branch goals.

The committee noted that the Legislature has not updated or revised the term “mentally disordered sex offender.” Because this term is still used in the Penal Code and other laws, the committee does not propose changing it in the rules.

Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal. There are no apparent barriers to implementation. The benefits of the proposal, including using respectful language in rules and forms, likely outweigh any potential cost.

Attachments and Links

1. Cal. Rules of Court, rules 8.482, 8.483, and 8.631, at pages 6–8
2. Form APP-060, at page 9
3. Chart of comments, at pages 10–13

Rules 8.482, 8.483, and 8.631 of the California Rules of Court are amended, effective January 1, 2023, to read:

Rule 8.482. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern appeals from judgments authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability.

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of ~~a developmentally disabled~~ an adult conservatee with a developmental disability is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c)–(i) * * *

Rule 8.483. Appeal from order of civil commitment

(a) Application and contents

(1) Application

Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508 govern appeals from civil commitment orders under Penal Code sections 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et seq. (~~mentally disordered~~ offenders with mental health disorders); Welfare and Institutions Code sections 1800 et seq. (extended detention of dangerous persons), 6500 et seq. (~~developmentally disabled~~ dangerous persons with developmental disabilities), and 6600 et seq. (sexually violent predators); and former Welfare and Institutions Code section 6300 et seq. (mentally disordered sex offenders).

(2) Contents

* * *

(b)–(e) * * *

1 **Rule 8.631. Applications to file overlength briefs in appeals from a judgment of**
2 **death**

3
4 **(a)–(b) * * ***
5

6 **(c) Factors considered**
7

8 The court will consider the following factors in determining whether good cause
9 exists to grant an application to file a brief that exceeds the limit set by rule 8.630:
10

11 (1) The unusual length of the record. A party relying on this factor must specify
12 the length of each of the following components of the record:
13

14 (A) The reporter's transcript;
15

16 (B) The clerk's transcript; and
17

18 (C) The portion of the clerk's transcript that is made up of juror
19 questionnaires.
20

21 (2) The number of codefendants in the case and whether they were tried
22 separately from the appellant;
23

24 (3) The number of homicide victims in the case and whether the homicides
25 occurred in more than one incident;
26

27 (4) The number of other crimes in the case and whether they occurred in more
28 than one incident;
29

30 (5) The number of rulings by the trial court on unusual, factually intensive, or
31 legally complex motions that the party may assert are erroneous and
32 prejudicial. A party relying on this factor must briefly describe the nature of
33 these motions;
34

35 (6) The number of rulings on objections by the trial court that the party may
36 assert are erroneous and prejudicial;
37

38 (7) The number and nature of unusual, factually intensive, or legally complex
39 hearings held in the trial court that the party may assert raise issues on
40 appeal; and
41

(8) Any other factor that is likely to contribute to an unusually high number of issues or unusually complex issues on appeal. A party relying on this factor must briefly specify those issues.

(d) * * *

Advisory Committee Comment

Subdivision (a). * * *

Subdivision (c)(1)(A). As in guideline 8 of the Supreme Court’s Guidelines for Fixed Fee Appointments, juror questionnaires generally will not be taken into account in considering whether the length of the record is unusual unless these questionnaires are relevant to an issue on appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004 were 10,000 pages or less, excluding juror questionnaires.

Subdivision ~~(e)(1)(E)~~(c)(5). Examples of unusual, factually intensive, or legally complex motions include motions to change venue, admit scientific evidence, or determine competency.

Subdivisions ~~(e)(1)(E)~~ ~~(d)(c)(5)–(8)~~. Because an application must be filed before briefing is completed, the issues identified in the application will be those that the party anticipates *may* be raised on appeal. If the party does not ultimately raise all of these issues on appeal, the party is expected to have reduced the length of the brief accordingly.

Subdivision ~~(e)(1)(E)~~(c)(7). Examples of unusual, factually intensive, or legally complex hearings include jury composition proceedings and hearings to determine the defendant’s competency or sanity, whether the defendant ~~is mentally retarded~~ has an intellectual disability, and whether the defendant may ~~represent himself or herself~~ be self-represented.

Subdivision (d)(1)(A)(ii). To allow the deadline for an application to file an overlength brief to be appropriately tied to the deadline for filing that brief, if counsel requests an extension of time to file a brief, the court will specify in its order regarding the request to extend the time to file the brief, when any application to file an overlength brief is due. Although the order will specify the deadline by which an application must be filed, counsel are encouraged to file such applications sooner, if possible.

Subdivision (d)(3). * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT 03/08/2022 Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____	
CASE NAME: _____	
DEFENDANT/RESPONDENT: _____	
NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS	CASE NUMBER: _____

NOTICE

You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.

NAME of Defendant/Respondent: _____

DATE of the order or judgment: _____

2. This appeal is (*check one*):

- a. ☐ after a jury or court trial.
- b. ☐ after a contested hearing.
- c. ☐ after an admission, stipulation, or submission.
- d. ☐ other (*specify*): _____

3. Defendant/Respondent is currently being held under:

- ☐ Penal Code, § 1026 et seq. (not guilty by reason of insanity)
- ☐ Penal Code, § 1370 et seq. (incompetent to stand trial)
- ☐ Penal Code, § 1600 et seq. (return to confinement)
- ☐ Penal Code, § 2962 et seq. (**offenders with mental health disorders**)
- ☐ Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
- ☐ Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)
- ☐ Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
- ☐ Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
- ☐ Welfare & Institutions Code, § 6500 et seq. (**dangerous persons with developmental disabilities**)
- ☐ Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
- ☐ Other (*specify*): _____

4. ☐ Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent: ☐ was ☐ was not represented by an appointed attorney in the superior court.

5. Defendant/Respondent's mailing address is ☐ same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.
☐ as follows: _____

Date: _____



(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
1.	California Lawyers Association by Dean A. Bochner, Chair Committee on Appellate Courts	NI	I write on behalf of the Committee on Appellate Courts of the California Lawyers Association’s Litigation Section (“CAC”) to offer the following comments on the Appellate Advisory Committee’s recent proposals (1) to update language referring to persons with disabilities in several court rules and in a form (SPR22–02) and (2) to extend the time the Court of Appeal must retain the reporter’s transcript in cases affirming a felony conviction from 20 years to 75 years (SPR22–03). CAC consists of appellate practitioners and court staff, drawn from a wide range of practice areas, from across the state. As part of its mission, CAC frequently shares its views regarding proposals to change rules that govern appellate practice. CAC supports SPR22-02, which would remove from several court rules and a Judicial Council form outdated and disfavored terms that refer to persons with disabilities and replace them with more respectful terms. We believe that this proposal appropriately addresses its stated purpose of portraying individuals with disabilities in a more respectful way by using “Person First Language” that recognizes a person is not a disability, condition, or diagnosis. [See comment on proposal SPR22-03.]	The committee appreciates these comments and notes the commenter’s support for the proposal. The committee thanks the commenter for this feedback confirming that the amended language is appropriate and respectful.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
			Thank you for giving us the opportunity to comment on these proposals.	
2.	Disability Rights Education & Defense Fund by Claudia Center Legal Director	A	The Disability Rights Education & Defense Fund (DREDF), based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal civil rights laws protecting persons with disabilities. DREDF has extensive experience with the portrayal of disability, including the use of language regarding disability. In 2008, DREDF launched the Disability & Media Alliance Project (DMAP). The goal of DMAP is to change the focus from sensational, cloying and misinformed disability coverage that undermines the public policy and legal advances of the last 25 years to coverage that raises public awareness and helps to end disability discrimination. DMAP monitors and informs disability coverage in news reports, dramatic representations, and the Internet with the goal to advance accurate reporting of disability issues	The committee notes the commenter's support for the proposal and appreciates receiving feedback from an organization with legal and policy expertise in advocating for and protecting the rights of people with disabilities. The committee appreciates the commenter's perspective and experience in this area.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
			and promote positive images of people with disabilities. DREDF supports the proposed changes to Cal. Rules of Court, rules 8.482, 8.483, and 8.631, and to form APP-060. The proposed changes are consistent with the generally preferred “person first” terminology for people with intellectual, developmental, and mental health disabilities. However, DREDF writes to provide additional important context. Contrary to the explanation set out in the background material to the proposed language changes, the “person first” approach to disability language is <u>not</u> universally preferred by the individuals and disability groups comprising the disability community. Rather, “identity first” language is an increasingly popular alternative, particularly for certain disability groups. The style guide cited is on this point incomplete and outdated (as are several other prominent style guides on this point). To provide some examples, the following disability groups currently prefer “identity first” language: blind people (not “individuals with blindness” or “individuals with visual impairments”); Deaf people or D/deaf and hard of hearing people; and autistic and neurodivergent people. Similarly, many emerging and younger leaders in the disability	The committee appreciates the support for the proposal and feedback that the amended language is appropriate and respectful. This information on the “identity first” approach to disability language is very helpful. The committee has included this information in the Judicial Council report to avoid suggesting that “person first” language is universally preferred. The committee notes that the Guidelines promulgated by ADANN, as discussed in the report, include the “identity first” approach. The committee thanks the commenter for these examples and how to access more information.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR22-02

Rules and Forms: Update Language Referring to Persons with Disabilities (Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060)

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

	Commenter	Position	Comment	Committee Response
			movement prefer the identity-first “disabled person” over the person-first “person with a disability.” You can read about this on social media, including under the hashtag #SayTheWord. Again, the proposed changes are appropriate, and DREDF supports them. However, we urge you not to adopt a blanket “person first” approach to disability language, as this will not be appropriate in all contexts. See article written by several disability and legal scholars that review the language preferences at issue in the proposed rule. Citation: E.E. Andrews, R.M. Powell and K. Ayers, The evolution of disability language: Choosing terms to describe disability, Disability and Health Journal 15 (2022) 101328.	The committee agrees with the commenter’s approach to disability language. The committee appreciates this additional source on language preferences.
3.	Superior Court of Orange County by Iyana Doherty Courtroom Operations Supervisor	A	No specific comment.	The committee notes the commenter’s support for the proposal.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated