



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-15

Title

Unlawful Detainers: Forms to Implement
Assembly Bill 3088

Rules, Forms, Standards, or Statutes Affected

Adopt form UD-101; approve forms UD-104
and UD-104(A); and revise form UD-105

Recommended by

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

Action Requested

VOTING MEMBERS ONLY: Submit votes
by responding to the transmittal e-mail.

Please Respond By

Friday, October 2, 2020, at 12:00 noon

Date of Report

September 30, 2020

Contact

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California Rules of Court, rules 10.5(h) and 10.13(d) allow the Judicial Council to act on business between meetings, including urgent matters, by circulating order. This memorandum is not a Judicial Council meeting, circulating orders are conducted via electronic communications. Prior public notice of a proposed circulating order is not required.

Executive Summary

The enactment of the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assem. Bill 3088; Stats. 2020, ch. 37) changes the practice and procedures relating to all residential unlawful detainer actions from now until January 31, 2021, and for a longer period for actions based on unpaid rent or other charges due at any time between March 1, 2020, and January 31, 2021. The Civil and Small Claims Advisory Committee is recommending new and revised forms to assist courts in determining how to properly proceed with cases under the new law, and to assist parties in understanding their rights and responsibilities.

Because the new law was enacted as urgency legislation late on August 31, 2020, with many of the new procedures relating to unlawful detainers based on nonpayment of rent becoming operative on October 5, this proposal was developed on an accelerated timeline with the intent of having new and revised forms effective by that date. On September 30, 2020, the Rules Committee reviewed the proposal in this circulating order memorandum under California Rules of Court, rule 10.13(d) and approved its circulation to the council.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective October 5, 2020:

1. Adopt as mandatory *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101);
2. Approve as optional *Cover Sheet for Declaration of COVID-19–Related Financial Distress* (form UD-104) and *Attachment—Declaration of COVID-19–Related Financial Distress* (form UD-104(A)); and
3. Revise *Answer—Unlawful Detainer* (form UD-105).

The proposed new forms are attached at pages 20–29.

Relevant Previous Council Action

On March 27, 2020, the Governor issued an executive order¹ giving the Judicial Council of California and the Chief Justice as Chair of the Judicial Council authority to take necessary action to respond to the COVID-19 pandemic, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil or criminal practice or procedure. The Governor's order also suspended statutes to the extent that they would be inconsistent with such emergency rules. At the time of this order and for several weeks thereafter the Legislature was not in session. Under that order, the council adopted emergency rules 1 through 11 on April 6, 2020.²

Among those rules, the Judicial Council adopted emergency rule 1, which prevented courts from issuing summons on unlawful detainer complaints or issuing defaults in such actions, unless the plaintiff could show the need to proceed on public health and safety grounds, and continued trials in any unlawful detainer actions for at least 60 days, with no new trials to be set until at least 60 days after a request for trial is filed. By its term, emergency rule 1 was to remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19

¹ Executive Order N-38-20, www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-N-38-20.pdf.

² The council also subsequently adopted emergency rules 12 and 13 by circulating order.

pandemic was lifted, or until amended or repealed by the Judicial Council. On August 13, 2020, the Judicial Council amended emergency rule 1 to sunset on September 1, 2020.

Analysis/Rationale

Background

Assembly Bill 3088, which includes the COVID-19 Tenant Relief Act of 2020 (adding sections 1179.01 through 1179.07 to the Code of Civil Procedure³), was enacted as urgency legislation, and so put in place new provisions addressing unlawful detainer actions that are already in effect. (See Link A.) The bill provides, among other things, certain protections to residential tenants being terminated for failure to pay rent due from March 1, 2020, through January 31, 2021. In order for courts to determine whether, in light of these new protections, judgments may issue on unlawful detainer cases over the coming months, plaintiffs will need to provide information beyond the allegations contained in Judicial Council form *Complaint—Unlawful Detainer* (form UD-100) or included in individually drafted complaints prior to the enactment of AB 3088. The changes in the law that result in the courts needing this additional information are summarized below.

AB 3088 provisions effective before October 5, 2020

To begin, plaintiffs in all unlawful detainer actions must file a supplemental cover sheet that states whether the property at issue is residential or commercial, and whether the reason for termination is based in whole or in part on failure to pay rent or other charges. (§ 1179.01.5(c).)

Until October 5, 2020, for unlawful detainer actions for residential tenancies (including for mobile homes) based in whole or in part on nonpayment of rent or other charges, the new law continues the prohibition on a court issuing a summons or default judgment that was in effect under California Rules of Court, emergency rule 1. (§ 1179.01.5(b).) AB 3088 contains no similar stay for actions on residential tenancies solely for reasons *other* than failure to pay—although they have to meet certain requirements (§ 1179.03.5(a)(3))—and no prohibitions at all on actions for commercial tenancies.⁴

AB 3088 provisions effective October 5, 2020, through January 31, 2021

During this period the following provisions apply:

- Actions in unlawful detainer based on a termination notice or notices that demand payment of rent or other financial obligations may proceed if:
 - The time to pay in the termination notice ended *before* March 1, 2020 (§ 1179.03.5(a)(1)); or

³ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

⁴ For purposes of the COVID-19 Tenant Relief Act of 2020, “tenant” does not include tenants of commercial properties. (§ 1179.02(h).)

- The rent or other financial obligation was due between March 1, 2020, and January 31, 2021 (COVID-19 rental debt⁵) and both of the following apply:
 - Landlord provided tenant with the newly required 15-day termination notice that includes an unsigned copy of a declaration of financial distress (§ 1179.03(b) & (c).) (This notice can only be served after or at the same time as service of a more general notice of the tenant’s rights. (§ 1179.04(c).))
 - Tenant did *not* provide landlord with a signed declaration of financial distress in response, and in certain instances with documentation to support the declaration (§ 1179.02.5(c)), within the 15-day period.⁶ (§ 1179.03.5(a)(2).)
- If the tenant in an action based on a termination notice that demands payment of COVID-19 rental debt *does* timely provide the landlord with a declaration of financial distress, stating under penalty of perjury that the tenant has experienced a loss of income or increase in expenses related to the COVID-19 pandemic:
 - For rents due between March 1, 2020, and August 31, 2020 (COVID-19 rental debt due during the *protected* time period),⁷ no unlawful detainer judgment may ever issue based on that unpaid rent. (§ 1179.03(g)(1).) The tenant is still liable for the protected COVID-19 rental debt (see notice to tenant in section 1179.03(b)(4)), but that debt cannot be a basis for an unlawful detainer action.
 - For rents due between September 1, 2020, and January 31, 2021 (COVID-19 rental debt due during the *transition* period):⁸
 - No unlawful detainer action may be initiated by the landlord until February 1, 2021 (§ 1179.03(g)(2)(A)).
 - No unlawful detainer judgment may ever issue based on that unpaid rent if the tenant, by January 31, 2021, pays the landlord at least 25 percent of all COVID-19 rental debt due during the transition period. (§ 1179.03(g)(2)(B).) The

⁵ “COVID-19 rental debt” is defined in the statute as “unpaid rent or on any other unpaid financial obligation of a tenant under the tenancy that came due during the covered time period.” (§ 1179.02(c).) The phrase is not further defined, and the meaning of other financial obligations will ultimately have to be determined by a court.

⁶ If the tenant does not provide the landlord with the declaration of financial distress within the required time, the tenant may file one with the court within the time for answering the complaint. If the court, after a noticed hearing, finds good cause for failure to meet the deadline, the protections in the act will apply and the case may be dismissed or conditionally dismissed. (§ 1179.03(h).) One of the forms the advisory committee proposes is a cover sheet for such filings.

⁷ AB 3088 defines “protected time period” as the “time period between March 1, 2020, and August 31, 2020.” (§ 1179.02(f).)

⁸ AB 3088 defines “transition time period” as the “time period between September 1, 2020, and January 31, 2021.” (§ 1179.02(i).)

tenant is still liable for the other 75 percent of the COVID-19 rental debt from the transition period (see notice to tenant in section 1179.03(c)(4)), but that debt cannot be a basis for an eviction.

- If the tenant does *not* pay the 25 percent minimum by January 31, 2021, an unlawful detainer action may proceed after January 31, 2021.
- After March 1, 2021, and through January 31, 2025, actions to recover the unpaid protected or transitional COVID-19 rental debt that are over the small claims court jurisdictional amount may be brought in small claims court.⁹ (§ 116.223(a)(4).) In addition, a landlord of residential rental property may bring more than two such actions in small claims court in any calendar year during that period, notwithstanding the limit in section 116.231. (§ 116.223(c).)
- Other actions in unlawful detainers for residential tenancies may proceed to judgment before February 1, 2021, but until that date the following provisions apply:
 - The time period in which to act in the termination notice provided to the tenant ended *before* March 1, 2020 (§ 1179.03.5(a)(1));
 - If the time period ended March 1, 2020, or later:
 - The basis for the termination must be either an “at-fault just cause” or a “no-fault just cause,” as those terms are defined in Civil Code section 1946.2(b)(1) and (2), with some additional requirements for two just cause reasons (§ 1179.03.5(a)(3)); and
 - Damages for COVID-19 rental debt may not be included in the unlawful detainer judgment unless the action is also based on a failure to pay such rent and the tenant did not provide the declaration of financial distress. (§ 1179.03.5(a)(3)(B).)

Federal protections

The CARES Act¹⁰ prohibits evictions from rental units in properties with federally backed multifamily mortgages if subject to a mortgage forbearance, and for 30 days after the forbearance ends (15 U.S.C. § 9507).¹¹

⁹ This may require a new Judicial Council small claims form for actions to recover COVID-19 rental debt that are over the jurisdictional limit, but because such cases may not be brought in small claims court until March 1, 2021, there is more time for that form to be developed.

¹⁰ The Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136 (Mar. 27, 2020) 134 Stat. 281).

¹¹ The CARES Act’s broader eviction protection of rental units in all properties that participate in federal assistance programs or have a federally backed mortgage or multifamily mortgage loan ended on July 24, 2020 and has not been extended as of this time.

There is also a new federal order to be considered. The U.S. Centers for Disease Control and Prevention (CDC) issued an agency order temporarily halting evictions for failure to pay rent on public health grounds (to keep people out of shelters and shared accommodations), effective September 4, 2020, through December 31, 2020. The order provides that during that period a landlord or property owner

shall not evict any covered person from any residential property in any State or U.S. territory ... that provides a level of public-health protections below the requirements listed in this Order.

(Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 at 55296 (Sept. 4, 2020); see Link B (CDC order).)

New form for plaintiffs (form UD-101)

The advisory committee is recommending the adoption of a mandatory form, effective October 5, 2020, that must be filed by any plaintiff seeking court action on a pending unlawful detainer case or filing a new unlawful detainer complaint: *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101). This form will comprise the cover sheet mandated by the statute, along with allegations as to the various facts that a court will need to know to properly apply the new provisions in the COVID-19 Tenant Relief Act of 2020 to both pending cases and new cases. Without such information, it will be difficult, and in some situations—including entry of default judgments—may not be possible, for a court to proceed under the new law. Section 1179.01.5(c)(4) expressly provides that the Judicial Council may develop a form for mandatory use that includes the information required to be in the cover sheet.

The content of form UD-101 and why it is needed is summarized below.

- The instructions advise plaintiffs that they must file this form in unlawful detainer actions, whether asking the court to act in a pending unlawful detainer proceeding or filing a new complaint. They are also advised that this form takes the place of the cover sheet required in section 1179.01.5(c), and that they need to serve it either with the summons (for new complaints being filed) or, in pending cases, by mail or any other means authorized by law. The instructions also inform the parties that, if the form is filed in a pending action in which the defendant has already filed an answer, the defendant is not required to respond to any new allegations in the form before trial.
- Items 2a and 2b provide the information that section 1179.01.5 requires in a cover sheet for all unlawful detainer actions. The instructions in item 2a note that if the plaintiff indicates that the property at issue is only commercial, no other information is required. They also note that if the property is residential, all remaining items that apply to the action should be completed.

- Item 3, added in light of comments received on the forms, addresses the fact that “tenants” is defined in AB 3088 to exclude not only tenants on commercial properties, but also tenants that are not natural persons, and people who live in transient tenancies.
- Item 4 addresses federal law protections that might be available, both under the CDC order (asking whether or not the defendant has provided a hardship statement under the CDC order and warning plaintiffs that they may face penalties if they proceed in violation of the order) and under the CARES Act (asking whether the property is subject to a mortgage forbearance, which would preclude evictions under title 15 United States Code section 9507). If a court determines that either protection applies in a given case, the court can determine appropriate action based on this information.
- Item 5, clarified in light of comments received, allows a plaintiff to allege that the action is based on a termination notice that expired before March 1, 2020 (and so can go forward before February 1, 2021, under section 1179.03.5(a)(1)). If the action is based solely on this pre-COVID-19 notice, the instructions note that no further items in the form need be completed.
- Item 6 provides the new information the court will need to proceed on actions based on rent or other financial obligations due during the protected time period (between March 1, 2020, and August 31, 2020):
 - Did the landlord provide the “Notice From the State of California” regarding the tenant’s rights required by section 1179.04? (Item 9 asks for information regarding when and how it was provided.)
 - Did the landlord serve the newly required 15-day termination notice with a blank declaration of financial distress (§ 1179.03(b))? If not, the notice is not sufficient to support an unlawful detainer judgment and any case—no matter when filed—based on a different notice may be dismissed. (§ 1179.03(a).) If so, that is the notice of termination that should be attached to the complaint. (Instructions to that effect are included for those using the form complaint.)

There are also instructions that if the 15-day termination notice identifies the defendant as a “high-income tenant” and asks for documentation of the financial distress, then the plaintiff must provide additional information, as required by section 1179.02.5, in item 9.

 - Did the defendant timely provide a declaration of financial distress? If so, an unlawful eviction judgment may not issue (§ 1179.03(g)); if not, the case may proceed to judgment before February 1, 2021 (§ 1179.03.5(a)(2)).
- Item 7 is essentially the same as item 6 but is for actions based on rent or other financial obligations due during the transition time period (between September 1, 2020, and January

31, 2021). This separate item is needed because a landlord must give different 15-day notices for the different periods. (§ 1179.03(c) & (e).) Item 7 also includes an item to be completed only in cases filed after January 31, 2021, to provide information as to the amount the tenant paid for rent due during the transition time period. Only if a defendant who has filed a declaration of financial distress has failed to pay the 25 percent minimum may an unlawful detainer judgment be issued. (§ 1179.03(g).)¹²

- Item 9 addresses the additional information needed if the 15-day termination notice identified the defendant as a high-income tenant. If so, the plaintiff must allege having proof of the tenant’s high income before sending the 15-day termination notice. (§ 1179.02.5(f).) In addition, a tenant must have complied in two different ways to receive the protection of the new law and preclude an action from proceeding (at least before February 1, 2021): (1) have timely returned the declaration of financial distress and (2) have timely submitted documentation supporting that declaration. Item 9 includes allegations about both.
- Item 10 addresses the additional information required for unlawful detainer judgments to be issued on residential tenancies before February 1, 2021 (beyond that provided elsewhere on the form—action based on termination notices that expired before March 1, 2020, or declaration of financial risk not timely provided): that the termination is based on either at-fault or no-fault just cause as defined in Civil Code section 1946.2(b)(1) or (2) (albeit with some specified additional requirements for two of the bases for no-fault just cause). (§ 1179.03.5(a)(3).)¹³ Because, through January 31, 2021, the just cause requirements are not limited to only those tenancies to which Civil Code section 1946.2 otherwise applies, this supplemental information is needed for a court to determine if a judgment can proceed under this provisions of AB 3088.¹⁴

Item 10c is included to put the party and the court on notice that, before February 1, 2021, COVID-19 rental debt cannot be recovered in an action based solely on these just-cause claims. (§ 1179.03.5(a)(3)(B).) Damages are available in such actions only if the

¹² The California Apartment Association has commented that the information in this item may not reflect whether the amount paid is sufficient under the statute to preclude eviction because there may have been one or more months during the period covered by the complaint when no declaration of financial distress was filed in response to a 15-day notice and so 100 percent of the rent must be paid for that month. The committee notes that the plaintiff can include such allegations in the complaint and declines to modify this item.

¹³ At-fault just cause, as defined in Civil Code section 1946.2(b)(1), includes failure to pay rent. Some commenters, including the tenant advocates and the California legislators, requested that item 10a regarding the “at-fault just cause” basis for termination of a tenancy be modified to expressly exclude nonpayment of rent from the at-fault bases permitted, on the ground that including nonpayment of rent would be inconsistent with the purpose and intent of AB 3088. However, the committee concluded it could not carve out an exception in the form from what is set out in the plain language of the statute. The position of the commenters may well have merit—but reconciling the intent of the legislation with the reference to Civil Code section 1946.2(b)(1) is a matter that will have to be resolved by a court and not in the drafting of a form or in this recommendation to the Judicial Council.

¹⁴ In *Complaint—Unlawful Detainer* (form UD-100), the item stating whether good cause exists is limited to tenancies subject to the Tenant Protection Act of 2019 (Assem. Bill 1482; Stats. 2019, ch. 597).

termination of the tenancy is also based on a cause for nonpayment of rent *and* the tenant did not return the declaration of financial distress in compliance with section 1179.03. (*Id.*)

- Item 11 allows a plaintiff filing after February 1, 2021, to state that the action is based on a demand for payment of rent due after January 31, 2021. Because this form is mandatory and will be needed for as long as a plaintiff may seek an eviction based on COVID-19 rental debt,¹⁵ this item is needed to indicate that certain actions based on nonpayment of rent after February 1, 2021, are not subject to the provisions in AB 3088.

New and revised forms for defendants

Answer—Unlawful Detainer (form UD-105)

The intent of form UD-101 is to provide courts with the information needed to know how an unlawful detainer case should proceed under the new—and complex—provisions of AB 3088. For pending cases, the form will do no more than provide that information. But for new unlawful detainer cases, the supplemental allegations will effectively act as a supplement to the complaint, the impact of which was not fully considered when the forms were originally proposed. As many commenters have asserted, tenants should have the right to contest those allegations through a denial—if they do not, then, as several commenters have noted, plaintiffs may argue that the allegations cannot later be contested.

In addition, many commenters asserted that the proposal unfairly benefits plaintiff landlords, by providing them in new form UD-101 a checklist of the new requirements under AB 3088 and allowing them to make the additional allegations needed to comply with that law, without providing similar assistance to defendant tenants in asserting defenses under the new act, or even to contest the new supplemental allegations. They assert that the new form UD-101 should not go forward without corresponding revisions to the *Answer—Unlawful Detainer* (form UD-105).

Although the committee in no way intended the proposal to benefit one party over the other, in light of the comments received, it understands that there is a perception of unfairness. The committee is also concerned that defendants, particularly self-represented defendants who rely on Judicial Council forms, need to be able to deny allegations in the new form UD-101 that they disagree with because, if they do not, it can be argued that they have waived their right to do so.

To address these issues, the committee proposes revising the *Answer—Unlawful Detainer* (form UD-105) to be effective October 5, 2020, even though this form has not yet been circulated. The recommended revisions are two-fold:

- Add new items in which a defendant may deny any of the supplemental allegations provided in form UD-101, either as part of a general denial (item 2a) or a specific denial (items 2b(3) and (4)); and

¹⁵ A termination notice for default in rent payment may be served for up to one year after the default. (§ 1161, para. 2.)

- Add new affirmative defenses at items 3l and 3m, adding to the checklist in the form those affirmative defenses that a defendant can raise under AB 3088, plus two under federal eviction protections. In addition, there is an “other” item for any affirmative defenses under AB 3088’s COVID-19 Tenant Relief Act of 2020 or local COVID-19–related ordinances to cover any affirmative defenses not identified here (item 3m(7)).

With courts authorized to proceed under AB 3088 with unlawful detainer cases for nonpayment of rent beginning October 5, 2020, the revised answer form with affirmative defenses under that new law and under federal eviction protections should be available by that same date. In addition, while the revised answer form has not yet been circulated, many commenters on the proposal that was circulated urged that revisions to the answer form are necessary if proposed form UD-101 is to be adopted by the council. The committee recommends that the council revise the answer form now, and that the form be circulated for comment shortly after it goes into effect. Although the committee has tried to identify all the affirmative defenses that apply at this time, circulation could identify additional ones that could be added to the form.

Cover sheet for late declaration and attachment (forms UD-104 and UD-104(A))

The advisory committee also proposes the expedited adoption of a form for defendants to use to file a declaration of financial distress received from the landlord with the court: *Cover Sheet for Declaration of COVID-19–Related Financial Distress* (form UD-104). As noted above, if the tenant has been served with an unsigned declaration of financial distress with a 15-day notice but does not deliver the signed declaration to the landlord within the statutorily required time, and the landlord files an unlawful detainer action, the tenant may file a signed declaration directly with the court within the time for answering the complaint. (§ 1179.03(h).) The court is to set a hearing if a late declaration is filed, providing between 5 and 10 days’ notice to the parties, to determine if there is just cause for the late filing using the standard set out in section 473 and, if so, to dismiss the case. (*Id.*)

The proposed cover sheet identifies the action with which the declaration is connected and also provides the defendant’s contact information in the event the defendant does not file an answer at the same time (contact information the court will need to notice a hearing). The filing of the cover sheet will act as a trigger for the court, so that the court knows to set the mandated hearing and provide required notice to the parties.

Originally this form was proposed as a mandatory form, to ensure that the court would be able to identify in what case the declaration should be filed and the hearing set, and would know that a hearing needed to be set.¹⁶ However, the committee received extensive comments asserting that making this form mandatory would unfairly burden defendants, who, if self-represented, are unlikely to know of the requirement and, in light of the short time frame for filing the declaration

¹⁶ The committee was concerned that should the late declaration instead be attached to the answer or some other responsive pleading, for example, the court would not be aware of it or of the need to set a hearing until close to or at the time of trial.

with the court, may lose the protection of the law if the declaration is rejected because it was not attached to this cover sheet. In light of those comments, the committee is recommending this form be an optional one. Although the committee is concerned that declarations provided to the court without any cover sheet may be impossible for a court to associate with the correct action, it has concluded that the burden on all defendants to be required to use the cover sheet outweighs the potential impact on those defendants who do not identify their declarations in such a way that they can be filed in an ongoing action.

The new optional form UD-104 also, at the suggestion of commenters, now includes links to two websites where defendants can find legal resources and information about other protections that may be available under federal or local law. The form links to the website that AB 3088 mandates be identified in the notices to tenants, and the website that the California Department of Real Estate has created to assist all parties with this new law.

The form also advises the defendant of the timeline for filing the late declaration (the same time frame within which the defendant must file an answer), of the actions the court will take upon receiving the form (including the standard the court will apply to determine if the case should be dismissed), and a link to a website from which anyone filing a non-English-language version of the declaration can find an English-language version to attach as well.

The recommended form UD-104 no longer includes an optional item that was included in the form that was circulated for comment. That item would have allowed the defendant to provide the court an explanation of the reasons for the late provision of the declaration, in advance of the hearing. Although the committee had intended that to be helpful to defendants, inclusion of that item also meant that the form must be served on all parties to the action, since otherwise it would have constituted an ex parte communication with the court. Because of the concerns raised by many commenters that requiring service of this form would place a significant burden on self-represented defendants, particularly those without access to printers or copiers, the committee concluded that the burden to the parties was not worth what advantage they might gain by being able to provide a written explanation of their actions in advance of the hearing. Therefore, the form now being recommended is only a cover sheet for the declaration, with no option on it for adding statements by the defendant, and the prior instruction that it must be served is no longer on the form.

For defendants who want to file a late declaration but no longer have the declaration form served on them by the landlord, a declaration of COVID-19–related financial distress is also included in the proposal (form UD-104(A)), containing the text required for such a declaration in section 1179.02(d), which can be signed and either attached to the cover sheet or filed on its own.

Policy implications

The COVID-19 pandemic presents an unprecedented crisis that threatens the lives, health, and safety of all Californians. In AB 3088 the Legislature has enacted policies balancing protections for tenants, who are facing the loss of housing and potentially face homelessness as a result of

financial losses or expenditures related to the pandemic, with the rights of property owners who also have financial interests at stake. Because the legislation changes the practice and procedures relating to all residential unlawful detainer actions, it will have a significant impact on the courts in coming months. The council could choose to not adopt or revise any forms for this period, particularly since it may only last for a few months, instead leaving it up to each party and each court to determine their own way through the new laws. However, as noted in the comment from the Joint Rules Committee (JRS) of the Trial Court Presiding Judges Committee and Court Executives Advisory Committee, the proposed forms will assist courts in providing consistent experiences to court users attempting to navigate the challenging new provisions set forth in AB 3088.

Comments

Because of the time between the enactment of the law and the October 5 operative date of many of its provisions, proposed new forms UD-101, UD-104, and UD-104(A) were circulated for a three-day comment period. During that time, 55 comments (totaling 195 pages of comments) were received. They came from 23 legal service and public advocacy groups (hereafter referred to as tenant advocates); 7 courts and the JRS; the California Apartment Association and Southern California Rental Housing Association and several individual landlord attorneys; a group of six state legislators; a union, SEIU California; and various other individuals and attorneys. The comments are provided in their entirety with this memo,¹⁷ starting with a list of all commenters, and their position on the proposal if indicated in the comment.¹⁸ The content of the significant comments is summarized below, along with the committee’s responses.

The JRS and the Superior Courts of Los Angeles and Monterey Counties agreed with the proposal, with the latter stating it would prove valuable to parties and courts.

A few other courts agreed with the concept generally but requested modifications, some commenting that they thought form UD-101 should be split in two, with the very brief cover sheet mandated by the statute (essentially, item 2 in form UD-101) as one form, and the supplemental allegations as a separate form, either mandatory (Superior Court of Riverside County), or permissive (Superior Court of San Diego County), or incorporated into revised UD complaint and answer forms (Superior Court of Santa Barbara County). The committee considered these and concluded that the single mandatory form UD-101 would best assure consistency for court users throughout the state.

The comment from a group of six California legislators (in the comments under “California Legislators”) agreed with the proposal generally, but requested some changes that, they believe, would better reflect the intent behind the legislation. Those changes are discussed below. The

¹⁷ Comments are attached at the ending of the Circulating Order Memorandum, following the voting pages. The comments are in alphabetical order by name of entity or individual making the comment, and are bookmarked so that a particular comment can be easily located.

¹⁸ “A” for agree with proposal, “AM” for agree if modified, “N” for not agree, and “NI” for position not indicated.

California Apartment Association had a similar position, although the changes they requested are different.

A few commenters strongly opposed the proposal, including UCLA law professor emeritus Gary Blasi, Neighborhood Legal Services of Los Angeles County, and the Legal Aid Foundation of Los Angeles, opining that the proposed form UD-101 aided landlords, while no similar assistance was provided for tenants and the proposed form UD-104 placed multiple burdens on them. For the reasons stated above, the committee concluded the proposal should move forward, although it is now proposing an additional form to provide more help to defendants. From the other side of the bar, four landlord attorneys from the Fresno area (starting with attorney John Cadwalader¹⁹) also oppose the forms, stating, “The parties should be permitted to fully litigate the requirements of the [COVID-19 Tenant Relief Act of 2020] without being handicapped by the Judicial Council.” Although the committee accepted and incorporated into form UD-101 several of the more technical points offered by these commenters, it disagreed that forms would in any way handicap plaintiffs in unlawful detainer cases.

The California Access to Justice Commission did not expressly state that it opposed the forms but commented that the forms as proposed are unfair to tenants and suggested the forms should be delayed until the council could proactively provide further information to all parties. Several other commenters also suggested delaying implementation of the form, to give parties and courts more time to be educated on the provisions of AB 3088. While the advisory committee agrees that the proposal is moving at a much faster pace than is ideal, the committee concluded that a delay would not ultimately be helpful to anyone, as the cases can proceed beginning October 5 whether or not the forms are available to aid courts and parties. As to the suggestions to proactively provide information to all parties, this action is outside the scope of this forms proposal by the Civil and Small Claims Advisory Committee but has been referred to council staff working on self-help centers and the California Courts self-help website.

The tenant advocates, other than the two legal services groups mentioned above, did not indicate a position on the proposal but raised several concerns, which are summarized below.

Tenant advocates comments

In addition to comments on the content of each of the proposed forms, most of the tenant advocates comments raise the same three issues: (1) that the forms should give greater effect to the federal CDC order, including adding instructions to the court clerk to not accept the unlawful detainer complaint if plaintiff indicates that a tenant had provided a declaration under that order; (2) that there is a due process issue because the statute and form are silent on whether an answer must be filed at the same time as the declaration; and (3) that the proposal provides inequitable access to justice by aiding plaintiff landlords but not defendant tenants.

¹⁹ This commenter also raised several more technical points regarding AB 3088 that have now been incorporated into the proposed form.

Giving effect to the CDC order

The proposed form UD-101 does include an item in which the plaintiff must state whether the tenant has provided a declaration under the CDC order. (See item 4a.) However, the tenant advocates assert that such a statement, by itself, is insufficient. The commenters argue that the only evictions that can go forward if a declaration has been provided to the landlord under that order are those based on wrongful actions by the tenant. They assert that this means that the CDC order is broader in scope than AB 3088, in that it prohibits no-fault evictions as well as nonpayment evictions from an earlier period than the state law prohibits and that, therefore, the CDC eviction moratorium applies here in California.²⁰

The tenant advocates assert that form UD-101 needs to include instructions to the clerk to refuse to accept a filing if item 4a indicates a declaration has been provided to the plaintiff under the CDC order, unless the action is being filed on a basis permitted under that order. The committee concluded that this is not an appropriate instruction to include on the form. Clerks may only refuse to accept filings if the clerks can act on a ministerial basis. Having a clerk determine if an action is “permitted” under the CDC order goes far beyond ministerial action. In addition, it is not yet clear that the CDC order applies in California. The CDC order “does not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.” This could be interpreted to mean that the order does not apply in this state, because California provides a greater level of protection overall (e.g., for a longer period of time, and to renters of all income levels) than the CDC order. This is the position the California Apartment Association takes in their comment. (That commenter believes there should be no mention at all of the CDC order in form UD-101.) A contrary interpretation—the one asserted by the tenant advocates here—is that the CDC order applies in California, at least with respect to certain categories of renters who may not be protected by AB 3088. But which interpretation applies and whether the CDC order applies to a particular case will likely require a judicial determination. The committee concluded that this is not a determination that it could make and that it should not revise the form to direct a clerk to refuse to accept a complaint if a plaintiff had received a declaration under the CDC order.

Other suggestions relating to the CDC order by the tenant advocates and other commenters include the following:

- Add to item 4 on form UD-101 a reference to the penalties that a plaintiff might face if proceeding in violation of the order. The committee agreed with this suggestion and has added such a warning.
- Provide advice on form UD-104 that the CDC order might provide tenants with protection if AB 3088 does not. The committee has added advice to that form to seek more legal resources and information about other protections under federal or local law,

²⁰ The comment by the National Housing Law Project provides a more detailed presentation of this argument.

and provided links to two websites, the one cited in AB 3088 and the one put up by the California Department of Real Estate.

- Attach a copy of an unsigned declaration under the CDC order to form UD-104. (This in comments from the six California legislators and Public Advocates Inc.) In light of the discussion above, and the fact that the declaration is based on federal rather than state law, the committee concluded it was not appropriate to include it as part of a Judicial Council form.
- Include an emergency rule of court staying all residential unlawful detainer actions until such time as the court could provide defendants with information about the CDC order and an unsigned copy of a declaration under that order, and provide parties with time to provide a signed order. The committee considered but rejected this suggestion by commenter Public Advocates Inc. The committee concluded that, even putting aside the uncertainty of the applicability of the CDC order, such a recommendation would be recommending substantive policy in place of the Legislature rather than providing for procedure, and goes beyond the purview of this committee.

Revising UD-104 to clarify necessity of filing a responsive pleading

The tenant advocates argue that the defendant’s filing of a late declaration with the court relieves the defendant from having to file an answer until after such time as the court holds a hearing, rules on whether the case should be dismissed *and*, if not, provides additional time for the answer to be filed. They consider this a due process issue and express concerns that it is not addressed in form UD-104. The commenters concede that the statute, as well as proposed form UD-104, is silent as to how the filing of the late declaration permitted under section 1179.03(h) may affect the requirement for filing a responsive pleading.

The commenters argue that the tenants should not be required to file an answer with their declaration “because the statute creates a procedure where the declaration functions similarly to a ‘motion to dismiss.’” They propose that, in order to preserve a defendant’s right to file a responsive pleading, form UD-104 should state in bold letters at the top that, once filed, no default may be entered against the defendant. And they propose that no default should be entered unless and until the court rules against the defendant and the tenant fails to file a responsive pleading after the hearing, within a time to be set by the court (presumably at the hearing or as part of the court’s ruling after the hearing).

The statute does not actually require a motion or any pleading at all be filed with the declaration (a point the commenters themselves raise in arguing that form UD-104—the cover sheet for the declaration—should not be mandatory), so the committee was not convinced that the form should treat the filing of the declaration as the equivalent of a responsive pleading. There is nothing in the statute to indicate that the defendant, having been served a summons and complaint, is relieved of the requirement of filing an answer by filing the late declaration. Indeed, the fact that the hearing on a late declaration “may be held in conjunction with any other regularly noticed hearing in the case” (§1179.03(h)(1)(C)) seems to indicate otherwise—that the

case is to proceed as any unlawful detainer case would unless dismissed. The committee concluded that there is nothing in the plain language of the statute that would support the council's interpreting the law on this point and positing in a form that the filing of a declaration eliminates or defers the statutory requirement of filing an answer to an unlawful detainer complaint. The instructions in proposed form UD-104 have been revised to warn parties of the time frame for filing an answer.

Inequitable access to justice

The tenant advocates, and some other commenters, including the California Access to Justice Commission, assert that the proposal unfairly benefits plaintiff landlords by providing them a checklist of the new requirements of AB 3088 and allowing them to make the additional allegations needed to comply with that law, without providing similar assistance to defendant tenants in asserting defenses under the new act, or even to contest the new supplemental allegations. They argue that new form UD-101 should not go forward without corresponding revisions to *Answer—Unlawful Detainer* (form UD-105). As discussed in more detail above, after considering these comments the committee agreed to address this issue by recommending revisions to form UD-105 as part of this proposal.

The other aspect of the proposal that the tenant advocates, the California legislators, and other commenters found unfair was the fact that the proposal would *require* that the defendant tenant use a Judicial Council form to file a declaration of COVID-19–related financial distress with the court. Commenters were concerned that requiring defendants to use a specific form to file the declaration was too burdensome for many tenants, primarily due to self-represented tenants' lack of knowledge that the requirement exists, and also due to lack of access to copiers or printers during this pandemic. They argued that rejection of the filings for lack of the mandatory form could result in defendants losing their rights, especially in light of the short period within which the form must be filed. As discussed above, the committee agreed and is now proposing form UD-104 as an optional form.

Specific changes to the forms

Commenters also raised other, more specific concerns about the proposed forms. The committee considered all of the points raised and incorporated many of the suggested changes, while declining others. In addition to the modifications that have already been described, the more significant comments on the proposal and the committee's responses are noted below.

Form UD-101

- Item 4b has been added in light of the comment by the group of six California legislators, which requested incorporating an item addressing a potential eviction moratorium under federal law for multifamily properties with federally backed loans that are in forbearance. (The committee also included affirmative defenses for federal eviction protections to form UD-105, including that a 30-day notice is required for some.)
- In light of comments from several landlord advocates and others, any place where the law uses the phrase "COVID-19 rental debt" and the form had stated just "rent," the phrase

“rent and other financial obligations” has been added to more closely reflect the definition in the statute. (See, for example, the title of item 6.)

- Because, as several commenters noted, the general “Notice From the State of California” required by section 1179.04 must be provided before the 15-day notice in the transition time period as well as the protected time period, and may be provided on a form with a different title, items regarding that notice have been modified.
- Because many commenters found the items regarding whether the 15-day notice designated the tenant as a “high-income tenant” confusing (former items 6d(3) and 8b(3)), the committee rewrote the items as instructions to complete item 9 if the tenant is so designated. (Item 9 contains more specific information relating to high-income tenants.)
- In light of comments questioning what the content of some subitems in item 10 is based on, cites to the specific code sections that support each subitem were added.
- The committee considered, but did not agree with, comments from tenant advocates that instructions should be added at the beginning of form UD-101 mandating that the plaintiff serve the tenant with a blank form UD-104 and unsigned declaration of financial distress along with this form. AB 3088 requires a landlord to provide to a tenant, along with the 15-day notice, an unsigned declaration and information about when it must be delivered back to the landlord. There is nothing in the statute that mandates that the landlord must do that a second time if the tenant does not return the declaration and the landlord files an action. That form UD-104 is now proposed as an optional form makes such a requirement even less appropriate.

Forms UD-104 and UD-104(A)

- Based on comments received, including comments from the Oakland City Attorney’s Office, the committee revised form UD-104 to make the five-day time frame for filing the declaration more obvious and to state more clearly that the case against the defendant may be dismissed if the form and signed declaration are filed.
- The committee declined to accept the suggestions in comments from the tenant advocates and California legislators to remove the statement that written filings must be in English (citing to section 185). This is a long-standing and specific law, which AB 3088 did not address. The committee did adopt the suggestion from the California legislators that defendants be allowed to provide, as the English translation for non-English-language declarations, a copy of the declaration from the Department of Real Estate (DRE) website, and have added that advice to the form, along with a link to the site where the DRE forms are available.
- The committee declined to accept the comment from the California Apartment Association that there should be advice to only file the declaration if it is a true statement;

that is advice that could be given for any document filed under penalty of perjury and is not something specific to declarations under AB 3088.

- The committee declined to add advice as requested by the Family Violence Appellate Project about additional protections under federal law for domestic violence victims that may be a defense to an eviction, citing title 34 United States Code section 12491. Those defenses are not specific to COVID-19 eviction protections, which are the impetus for this expedited proposal.
- The committee declined to add advice as requested by the tenant advocates that tenants with disabilities can request reasonable accommodations from landlords at any time during the process, citing California Code of Regulations, title 2, section 12176. Although this is correct, such accommodations are not specific to COVID-19 eviction protections, which are the impetus for this expedited proposal.
 - To the extent such advice regarding accommodations from a landlord (and regarding federal domestic violence defenses) should be included in an information sheet regarding responding to unlawful detainers generally, the committee will consider them in the future as time and resources allow.
 - To the extent the comments relate to reasonable accommodations at a court, there is a process in place already to address this issue. (See Cal. Rules of Court, rule 1.100 and *Request for Accommodations by Persons with Disabilities and Response* (form MC-410).)²¹
- The committee declined all suggestions on clarifying or adding check boxes to optional item 2 (about why a declaration had not been delivered to the landlord) because that item has been removed from the form, but considered them all and incorporated several when adding new affirmative defenses to the revised answer form.
- The committee added a full header to the top of form UD-104(A). Because the cover sheet is no longer required, this header will provide the information a court needs about the party should the party not include a cover sheet and merely file this version of the declaration with the court.

Alternatives considered

In addition to the alternatives discussed above, the committee considered not recommending any new form for plaintiffs, leaving it to each individual party to determine what specific allegations would be required to obtain an unlawful detainer judgment under the new requirements in AB 3088. However, because of the difficulty both courts and parties might have in determining

²¹ As to the suggestion by Disability Rights California that the form itself be made more accessible, the committee notes instructions on increasing font size and color contrast of the electronic versions of Judicial Council forms can be found on the “Website Technical Assistance” page of the California Courts website at www.courts.ca.gov/8563.htm.

if cases could proceed under the law without such a form, and because the new law expressly authorizes the Judicial Council to adopt one,²² the committee concluded that a new form would be helpful to all involved. Similarly, the committee concluded that the new declaration cover sheet, even as an optional form, will help courts to identify when a hearing must be set, as well as assist self-represented tenants in exercising their right to provide the declaration of financial distress beyond the statutory deadline.

Fiscal and Operational Impacts

Although AB 3088 will have a significant impact on court operations, the new forms are intended to assist courts in dealing with that impact, making it easier for clerks and judicial officers to process and adjudicate unlawful detainer proceedings in compliance with the new law. Court staff, judicial officers, and self-help center staff will need to be trained on the newly required forms, when the forms are required, and what they contain. Case management systems may need to be adjusted to appropriately deal with the new forms.

Attachments and Links

1. Forms UD-101, UD-104, UD-104(A), and UD-105 at pages 20–29
2. Voting instructions at page 30
3. Vote and signature pages 31-32
4. Comments, following page 32.
5. Link A: Assembly Bill 3088,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3088
6. Link B: *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55292, www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-COVID-19

²² Section 1179.01.5(c)(4).

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT 09/30/20 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER		CASE NUMBER:
For action filed (<i>check one</i>): <input type="checkbox"/> before October 5, 2020 <input type="checkbox"/> on October 5, 2020, or later		

A plaintiff filing a complaint for unlawful detainer, or requesting any court action in an unlawful detainer proceeding filed before October 5, 2020, must complete all sections of this form applicable to the action. Filing this form complies with the requirement in Code of Civil Procedure section 1179.01.5(c).

- Serve this form with the summons.
- If a summons has already been served, then serve by mail or any other means of service authorized by law.
- If defendant has already answered, there is no requirement for defendant to respond to the supplemental allegations before trial.

1. PLAINTIFF (*name each*):

alleges causes of action in the complaint filed in this action against DEFENDANT (*name each*):

2. **Statutory cover sheet allegations** (Code Civ. Proc., § 1179.01.5(c))

a. This action seeks possession of real property that is (*check all that apply*): Residential Commercial
(If "residential" is checked, complete items 3 and 4 and all remaining items that apply to this action. If only "commercial" is checked, no further items need to be completed except the signature and verification.)

b. This action is based, in whole or in part, on an alleged default payment of rent or other charges. Yes No

3. **Tenants subject to COVID-19 Tenant Relief Act of 2020** (Code Civ. Proc., § 1179.02(h))

a. (1) One or more defendants in this action is a natural person: Yes No

(2) Identify any defendant not a natural person:

(If no is checked, then no further items need to be completed except the signature and verification.)

b. (1) All defendants named in this action maintain occupancy as described in Civil Code section 1940(b). Yes No

(2) Identify any defendant who does not:

(If yes is checked, then no further items need to be completed except the signature and verification.)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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4. Federal law allegations

- a. (Complete this item if action filed before December 31, 2020) Defendant has has not provided a statement under penalty of perjury for the Centers for Disease Control and Prevention's order for *Temporary Halt in Evictions to Prevent Further Spread of COVID-19* (85 Federal Register 55292). (Note to plaintiff: Proceeding in violation of the federal order may result in civil or criminal penalties.)
- b. This action does does not seek possession of a dwelling unit in property that has a federally backed multifamily mortgage for which forbearance has been granted under title 15 United States Code section 9057.
- (1) Date forbearance began
- (2) Date forbearance ended

5. Unlawful detainer notice expired before March 1, 2020

The unlawful detainer complaint in this action is based solely on a notice to quit, to pay or quit, or to perform covenants or quit, in which the time period specified in the notice expired before March 1, 2020. (If this is the only basis for the action, no further items on this form need to be completed except the signature and verification on page 4. (Code Civ. Proc., § 1179.03.5(a)(1).))

6. Rent or other financial obligations due between March 1, 2020, and August 31, 2020 (protected time period)

The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due in the protected time period. (Check all that apply.)

- a. Defendant (name each):

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. (Provide information regarding service of this notice in item 8 below.)

- b. One or more defendants was served with the notice in item 6a on a different date or in a different manner, which service is described in attachment 8c.
- c. Defendant (name each):

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19–related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(b) and (d).

(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))

(If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)

- d. Response to notice (check all that apply):

- (1) Defendant (name each):

delivered a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- (2) Defendant (name each)

did not deliver a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

7. Rent or other financial obligations due between September 1, 2020, and January 31, 2021 (the transition time period)

The unlawful detainer complaint in this action is based, at least in part, on a demand for payment of rent or other financial obligations due during the transition time period.

- a. Defendant (name each):

was served the "Notice from the State of California" required by Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. (Provide information regarding service of this notice in item 8 below.)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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7. b. One or more defendants was served with the notice in item 7a on a different date or in a different manner, which service is described in attachment 8c.
- c. Defendant (*name each*):

was served with at least 15 days' notice to pay rent or other financial obligations, quit, or deliver a declaration, and an unsigned declaration of COVID-19-related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(c) and (d).

(If the notice identified defendant as a **high-income tenant** and requested submission of documentation supporting any declaration the defendant submits, complete item 9 below. (Code Civ. Proc., § 1179.02.5(c).))

(If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that complaint form, and provide all requested information about service on that form.)

- d. Response to notice (*check all that apply*):

- (1) Defendant (*name each*)

delivered a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- (2) Defendant (*name each*)

did *not* deliver a declaration of COVID-19–related financial distress on the landlord in the time required. (Code Civ. Proc., § 1179.03(f).)

- e. Rent due (*complete only if action filed after January 31, 2021*):

- (1) Rent in the amount of \$ _____ was due between September 1, 2020 and January 31, 2021.
- (2) Payment of \$ _____ for that period was received by January 31, 2021.

8. **Service of Code of Civil Procedure Section 1179.04 Notice From the State of California** (*check all that apply*)

- a. The notice identified in item 6a and 7a was served on the defendant named in those items as follows:

- (1) By personally handing a copy to defendant on (*date*):

- (2) By leaving a copy with (*name or description*):

a person of suitable age and discretion, on (*date*): _____ at defendant's

residence business AND mailing a copy to defendant at defendant's place of residence.

- (3) By posting a copy on the premises on (*date*):

AND giving a copy to a person found residing at the premises AND mailing a copy to defendant at the premises on (*date*):

(a) because defendant's residence and usual place of business cannot be ascertained OR

(b) because no person of suitable age or discretion can be found there.

- (4) By sending a copy by mail addressed to the defendant on (*date*):

- b. (*Name*):

was served on behalf of all defendants who signed a joint written rental agreement.

- c. Information about service of notice on the defendants alleged in items 6b and 7b is stated in Attachment 9c.

- d. Proof of service of the notice or notices in items 6a, 6b, 7a, and 7b is attached to this form and labeled Exhibit 1.

9. **High-income tenant.** The 15-day notice in item 6c or 7c above identified defendant as a high-income tenant and requested submission of documentation supporting the tenant's claim that tenant had suffered COVID-19–related financial distress. Plaintiff had proof before serving that notice that the tenant has an annual income that is at least 130 percent of the median income for the county the rental property is located in and not less than \$100,000. (Code Civ. Proc., § 1179.02.5.)

- a. The tenant did not deliver a declaration of COVID-19–related financial distress within the required time. (Code Civ. Proc., § 1179.03(f).)

- b. The tenant did not deliver documentation within the required time supporting that the tenant had suffered COVID-19–related financial distress as asserted in the declaration. (Code Civ. Proc., § 1179.02.5(c).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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10. **Just cause eviction.** *(Only applicable if action is filed before February 1, 2021. Note: If the tenancy is subject to the Tenant Protection Act of 2019 (including Civil Code section 1946.2), plaintiff must, if using form UD-100, complete item 8 on that form in addition to this item.)*
- a. The tenancy identified in the unlawful detainer complaint in this action was terminated for at-fault just cause as defined in Civil Code section 1946.2(b)(1), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(i).)
- b. The tenancy identified in the unlawful detainer complaint in this action was terminated for no-fault just cause as defined in Civil Code section 1946.2(b)(2), which reason is in the notice of termination. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).) *(Complete (1) or (2) below, only if applicable.)*
- (1) The no-fault just cause is the intent to demolish or substantially remodel, which is is not necessary to comply with codes, statutes, or regulations relating to the habitability of the rental units. (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii).)
- (2) The tenancy identified in the complaint in this action was terminated because the owner of the property has entered into a contract with a buyer who intends to occupy the property and the property does does not meet all the requirements of Civil Code section 1946.2(e)(8). (Code Civ. Proc., § 1179.03.5(a)(3)(A)(ii)(II).)
- c. This action is based solely on the cause of termination checked in item 10a or b above, and is not for nonpayment of rent or other financial obligations. *(If this item applies, plaintiff may not recover any rental debt due from the period between March 1, 2020, and January 31, 2021, as part of the damages in this action. (Code Civ. Proc., § 1179.03.5(a)(3)(B).))*
11. **Rent or other financial obligations due after January 31, 2021.** *(Only applicable if action is filed on or after February 1, 2021.)* The only demand for rent or other financial obligations on which the unlawful detainer complaint in this action is based is a demand for payment of rent due after January 31, 2021.
12. Number of pages attached *(specify):*

Date: _____

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PLAINTIFF OR ATTORNEY)

VERIFICATION

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

I am the plaintiff in this proceeding and have read this complaint. 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)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">09/30/20</h2> <h2 style="margin: 0;">NOT APPROVED BY</h2> <h2 style="margin: 0;">JUDICIAL COUNCIL</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
COVER SHEET FOR DECLARATION OF COVID-19-RELATED FINANCIAL DISTRESS	CASE NUMBER:

Information for Defendant

A defendant tenant may use this form to file a declaration of COVID-19-related financial distress with the court if a plaintiff has filed an unlawful detainer action against the defendant and asserts that a defendant did not deliver a declaration within the required 15-day period after service of a notice demanding payment of rent or other financial obligations. (Code Civ. Proc., § 1179.03(h).)

For information about legal resources that may be available and to learn about other protections that may be available to you under federal or local law, go to lawhelpca.org or <https://landlordtenant.dre.ca.gov/>.

- The signed declaration (you may use form UD-104(A)) must be filed within 5 days after the summons and legal papers in the case are served on you, not counting Saturdays, Sundays, and other judicial holidays. This is the same time frame in which you must file an answer or other response to the complaint.
- If the declaration is filed within the time frame described above, the case against you may be dismissed. The court will set a hearing to determine if there was good cause for your not delivering the declaration to the plaintiff in the time required.
 - The court will provide a notice of the time and place of the hearing to all plaintiffs and defendants.
 - At the hearing, you may explain why you did not deliver this to the landlord in the time required.
 - If the court finds that your failure to provide the declaration was due to mistake, inadvertence, surprise, or excusable neglect, the court will dismiss the case against you.
- Written filings with the court must be provided in English. (Code Civ. Proc., §185 (a).)
 - If attaching a non-English-language declaration provided by the landlord, you should also attach an English-language version, either a copy that was given to you by the landlord or one from landlordtenant.dre.ca.gov/tenant/forms.html.
 - You can attach a translation of the declaration instead, if signed by the translator.

1. Defendant (name):
 has attached a declaration of COVID-19-related financial distress to this form, signed by defendant.

2. Number of pages attached, including signed declaration (specify):

Date:

 (TYPE OR PRINT NAME)



 (SIGNATURE OF DEFENDANT OR ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	<i>FOR COURT USE ONLY</i> DRAFT 09/28/20 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
ATTACHMENT—DECLARATION OF COVID-19—RELATED FINANCIAL DISTRESS		CASE NUMBER:

Review the information on form UD-104 to learn more about when to file this form.

I am currently unable to pay my rent or other financial obligations under the lease in full because of one or more of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to health impacts of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit my ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced my income or increased my expenses.

Any public assistance, including unemployment insurance, pandemic unemployment assistance, state disability insurance (SDI), or paid family leave, that I have received since the start of the COVID-19 pandemic does not fully make up for my loss of income and/or increased expenses.

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)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	STATE BAR NUMBER: STATE: ZIP CODE: FAX NO.:	FOR COURT USE ONLY DRAFT 9/30/2020 NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
PLAINTIFF: DEFENDANT:		
ANSWER—UNLAWFUL DETAINER		

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 and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101). (*Do not check this box if the complaint demands more than \$1,000.*)
- b. Defendant admits that all of the statements of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true EXCEPT:
- (1) Defendant claims the following statements of the complaint are false (*state paragraph numbers from the complaint or explain below or, if more room needed, 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, if more room needed, on form MC-025*):
 Explanation is on MC-025, titled as Attachment 2b(2).
- (3) Defendant claims the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are false (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*): Explanation is on MC-025, titled as Attachment 2b(3).
- (4) Defendant has no information or belief that the following statements on the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) are true, so defendant denies them (*state paragraph numbers from form UD-101 or explain below or, if more room needed, on form MC-025*):
 Explanation is on MC-025, titled as Attachment 2b(4).

CASE NUMBER:

3. AFFIRMATIVE DEFENSES (**NOTE:** For each box checked, you must state brief facts to support it in item 3o (page 3) or, if more room needed, on form MC-025.)
- 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 3o the facts showing violation of the ordinance.)
- h. Plaintiff's demand for possession is subject to the Tenant Protection Act, Civil Code section 1946.2 or 1947.12, and is not in compliance with the act. (Check all that apply and briefly state in item 3o the facts that support each.)
- (1) Plaintiff failed to state a just cause for termination of tenancy in the written notice to terminate.
- (2) Plaintiff failed to provide an opportunity to cure any alleged violations of terms and conditions of the lease (other than payment of rent) as required under Civ. Code, § 1946.2(c).
- (3) Plaintiff failed to comply with the relocation assistance requirements of Civ. Code, § 1946.2(d).
- (4) Plaintiff has raised the rent more than the amount allowed under Civ. Code, § 1946.12, and the only unpaid rent is the unauthorized amount.
- (5) Plaintiff violated the Tenant Protection Act in another manner that defeats the complaint.
- i. Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.
- j. 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.)
- k. 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.
- l. Plaintiff's demand for possession is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and January 31, 2021, even though it is alleged to be based on other reasons. (Civ. Code, § 1942.5(d).)
- m. Plaintiff's demand for possession is based on nonpayment of rent or other financial obligations due between March 1, 2020, and January 31, 2021, and (check all that apply):
- (1) Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)
- (2) Plaintiff did not provide an unsigned declaration of COVID-19-related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)
- (3) Plaintiff identified defendant as a "high-income tenant" in the 15-day notice, but plaintiff did not possess proof of income establishing that at the time the notice was served.

CASE NUMBER:

- m. (4) Defendant provided the following declaration to plaintiff (*check all that apply and describe when and how provided*):
- (a) Declaration of COVID-19–related financial distress (Code Civ. Proc., § 1179.03(b) or (c))
(*describe when and how delivered*):
- (b) Declaration under penalty of perjury for the Centers for Disease Control and Prevention's temporary halt in evictions to prevent further spread of COVID-19 (85 Federal Register at 55297)
(*describe when and how provided*):
- (5) Defendant is currently filing or has already filed a declaration of COVID-19-related financial distress with the court. (Code Civ. Proc. § 1179.03(h).)
- (6) Plaintiff violated the federal CARES Act because the property is covered by that act and
- (a) The federally-backed mortgage on the property was in forbearance when plaintiff brought the action. (15 U.S.C. § 9057.)
- (b) The plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).)
- (7) Plaintiff violated the COVID-19 Tenant Relief Act of 2020 (Code Civ. Proc., § 1179.01 et seq.) or a local COVID-19–related ordinance regarding evictions in some other way (*briefly state facts describing this in item o*).
- n. Other affirmative defenses are stated in item 3o.
- o. (*Provide facts for each item checked above, either below, or, if more room needed, on form MC-025*):
- Description of facts is on MC-025, titled as Attachment 3o.

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, if more room needed, on form MC-025*):

CASE NUMBER: _____

4. b. Explanation is on MC-025, titled as Attachment 4b.

c. Other (specify below or, if more room needed, 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, §§ 6400–6415)

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 defendant's 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)
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Instructions for Review and Action by Circulating Order

Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **October 2, 2020 at 12:00 noon.**
- If you are unable to reply by October 2, 2020 at 12:00 noon, please do so as soon as possible thereafter.

Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages

Effective immediately, the Judicial Council approves the recommendation by Civil and Small Claims Advisory Committee to adopt form UD-101; approve forms UD-104 and UD-104(A); and revise form UD-105, effective October 5, 2020.

My vote is as follows:

Approve (/s/)

Disapprove (/d/)

Abstain (/a/)

 Tani G. Cantil-Sakauye, Chair

_____/s/
 Marla O. Anderson

_____/a/
 Richard Bloom

_____/s/
 C. Todd Bottke

_____/s/
 Stacy Boulware Eurie

_____/s/
 Kevin C. Brazile

_____/s/
 Kyle S. Brodie

_____/s/
 Jonathan B. Conklin

_____/s/
 Carol A. Corrigan

_____/s/
 Samuel K. Feng

_____/s/
 Brad R. Hill

_____/s/
 Rachel W. Hill

_____/s/
 Harold W. Hopp

_____/s/
 Harry E. Hull, Jr.

My vote is as follows:

Approve (/s/) Disapprove (/d/) Abstain (/a/)

_____/a/
Hannah-Beth Jackson

_____/s/
Patrick M. Kelly

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

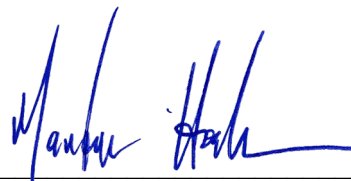
_____/s/
Maxwell V. Pritt

_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

Date: October 2, 2020

Attest:



Administrative Director and
Secretary of the Judicial Council

SP20-06

Unlawful Detainers: New Forms to Implement Assembly Bill 3088 (Adopt forms UD-101 and UD-104; approve form UD-104(A))

	Commenter	Position
1.	Lesly Adams Staff Attorney, Tenants' Rights San Diego Volunteer Lawyer Program	A
2.	Asian Americans Advancing Justice by Tiffany L. Hickey, Esq.	NI
3.	Bay Area Legal Aid by Lauren DeMartini, Housing Regional Counsel	NI
4.	Hon. James Baxter Commissioner, Superior Court of San Bernardino County	NI
5.	Gary Blasi Professor of Law Emeritus School of Law University of California, Los Angeles	NI
6.	Law Office of John W. Cadwalader by John Cadwalader	AM
7.	California Access to Justice Commission by Judge Mark Juhas, Chair	AM
8.	California Apartments Association By Heidi Palutke, Senior Vice President Compliance and Education	NI
9.	California Legislators	NI
10.	City Attorney, City of Oakland by Maria Bee, Chief Assistant City Attorney	NI
11.	Hon. Christine Copeland Commissioner Superior Court of Santa Clara County	A
12.	Richard Corbo, Esq. Superior Court of Santa Barbara County	NI
13.	Louie Coronado Attorney, Clovis	NI
14.	Community Legal Aid SoCal by Kate Marr, Executive Director	NI
15.	Community Legal Services in East Palo Alto by Jason Tarricone, Directing Attorney, Housing Program	NI
16.	Hon. Michael Dest Superior Court of San Bernardino County	N

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SP20-06

Unlawful Detainers: New Forms to Implement Assembly Bill 3088 (Adopt forms UD-101 and UD-104; approve form UD-104(A))

	Commenter	Position
17.	Disability Rights California by Heidi Joya, Staff Attorney	NI
18.	Patrick Dunlevy San Pedro	N
19.	East Bay Community Law Center by Linda Yu, Housing Practice Interim Director Berkeley	NI
20.	Elder Law & Advocacy by Rosanna Kendrick, Staff Attorney San Diego	NI
21.	Eviction Defense Collaborative by Carolyn Gold, Director of Litigation and Policy San Francisco	NI
22.	Candice Garcia-Rodrigo Riverside, CA	AM
23.	Family Violence Appellate Project	NI
24.	Steven. R. Hrdlicka Attorney Fresno	N
25.	Inner City Law Center by Alexander Harnden, Public Policy Advocate	AM
26.	Legal Aid Association of California by Zach Newman, Research Attorney	A
27.	Legal Aid Foundation of Los Angeles by Joshua R. Christian	NI
28.	Legal Aid Society of San Diego	NI
29.	Tyler Lester Attorney Fresno	N
30.	Mental Health Advocacy Services by Deepika Sharma, Director of Legal Services and Kate Bridal, Staff Attorney Los Angeles	NI
31.	Naiman Law Group by Randall D. Naiman, Founder and Managing Director	NI
32.	National Housing Law Project by Deborah Thrope, Deputy Director	NI

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SP20-06

Unlawful Detainers: New Forms to Implement Assembly Bill 3088 (Adopt forms UD-101 and UD-104; approve form UD-104(A))

	Commenter	Position
33.	Neighborhood Legal Services of Los Angeles by Trinidad Ocampo, Supervising Attorney	N
34.	Lynn Poncin Superior Court Judge Superior Court of San Bernardino County	AM
35.	Project Sentinel Dispute Resolution Programs by Emily Staats Hislop, Rent Stabilization Programs Manager	NI
36.	Public Advocates by Richard Marcantonio and Sam Tepperman-Gelfant, Managing Attorneys and Shajuti Hossain, Law Fellow San Francisco	NI
37.	Public Counsel (No name provided)	NI
38.	Public Law Center by Ugochi Anaebere-Nicholson Directing Attorney, Affordable Housing and Homelessness Prevention Unit	NI
39.	Jodi Prior Staff Attorney Superior Court of Ventura County	NI
40.	San Diego Volunteer Lawyer Program by Leslie Mackay, Supervising Attorney	AM
41.	SEIU California by Libby Sanchez, Legislative Advocate	AM
42.	Southern California Rental Housing Association by Molly Kirkland, Director of Public Affairs	N
43.	Superior Court of Los Angeles County by Bryan Borys	A
44.	Superior Court of Mono County by Lester Perpall, CEO	A
45.	Superior Court of Monterey County by Katy Grant Chief Operations Officer	NI
46.	Superior Court of Orange County Civil and Self Help UD Management Team by Sean E. Lillywhite, Administrative Analyst/Officer,	NI
47.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SP20-06**Unlawful Detainers: New Forms to Implement Assembly Bill 3088** (Adopt forms UD-101 and UD-104; approve form UD-104(A))

	Commenter	Position
48.	Superior Court of San Diego County by Michael Roddy, Executive Officer	AM
49.	Superior Court of Santa Barbara County by Julie Nicola, Civil Operations Manager	AM
50.	TCPJAC/CEAC Joint Rules Subcommittee Special Cycle Comments	AM
51.	Patricia Ann Turnage Owner/Attorney Law Offices of Patricia Turnage	AM
52.	Rachael Vasquez Legal Assistant Superior Court of Nevada County	AM
53.	Earl Wallace Attorney Ruzicka, Wallace & Coughlin	NI
54.	Western Center for Law and Poverty By Madeline Howard Senior Attorney Los Angeles	NI
55.	Aimee Williams Associate Attorney Castelblanco Law Group APLC	AM

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 9:42:48 AM

Proposal: SP20-06
Position: Agree
Name: Lesly Adams
Title: Staff Attorney, Tenants' Rights
Organization: SDVLP
Comment on Behalf of Org.: No
Address: 325 S. Melrose Drive, Suite 300
City, State, Zip: Vista CA, 92081
Telephone: 7604296304
Email: ladams@sdvlp.org

COMMENT:

I agree with the proposed changes and wholly support anything that makes the court's job easier during this time of uncertainty. I believe the Plaintiff should state on a cover letter whether his claim is related to non-payment of rent and that the Defendants should have a form stating that the non-payment is related to COVID-19. These proposed changes help the court and the defendant (whether self-represented or not).

From: [Tiffany Hickey](#)
To: [Invitations](#); [Ronan, Anne](#)
Subject: SP20-06 - Proposed Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 12:00:31 PM
Attachments: [2020.09.17 Comment Letter for AB 3088.pdf](#)

To Honorable Chief Justice Cantil-Sakauye & Members of the Judicial Council,

Please see the attached letter regarding SP20-06 - Proposed Forms to Implement Assembly Bill 3088. Thank you for your time and consideration.

Best regards,

Tiffany L. Hickey

Staff Attorney, Housing Rights Program

(Pronouns: she/her)

Asian Americans Advancing Justice – Asian Law Caucus

55 Columbus Avenue | San Francisco | California 94111

T: (415) 237-3630 (google voice)

F: (415) 896-1702

tiffanyh@advancingjustice-alc.org

www.advancingjustice-alc.org

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Via Email to invitations@jud.ca.gov; anne.ronan@jud.ca.gov

Judicial Council of California
Attn: Anne M. Ronan
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

To Honorable Chief Justice Cantil-Sakauye & Members of the Judicial Council:

We write to respectfully in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In order to ensure due process, amendments are required to the UD-105 Answer form to address the supplemental allegations in proposed form UD-101. In addition to updating the forms, the complexity of all of the new law also necessitates clear instructions and training for court staff.

Asian Americans Advancing Justice – Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. We focus on housing rights, immigration and immigrants' rights, labor and employment issues, student advocacy (ASPIRE), civil rights and hate violence, national security, and criminal justice reform.

We see in our all areas of our work and data supports that the COVID-19 pandemic continues to be a serious threat to the health and safety of Californians.¹ We are grateful the legislature has followed the Council's lead and created protections for tenants. As some eviction cases have moved forward throughout the pandemic, we have seen firsthand how difficult it is for the court, clients, and attorneys to navigate this uncharted territory. We hope the comments and suggestions in this letter help to

¹*Tracking Coronavirus in California*, L.A. TIMES (September 17, 2020), <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/>; also <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCoV2019.aspx>.

streamline the implementation of the complex new law, and conserve vital court resources while ensuring every tenant is afforded a safe and fair day in court.

1. **Incorporation of the Centers for Disease Control and Prevention’s Order**

As the Judicial Council is aware, the CDC’s Order, “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” implementing a nationwide eviction moratorium was published the day after our new state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. We have been working in coalition to educate fellow advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible and clear to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, we believe that the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms includes brief reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship at any time during the process. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.² The CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.³ The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms follow.

² The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Fed.Reg. at 55294.

³ Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on an at-fault just cause. However, this would require an incredibly technical reading of the statute and a completely absurd result that undermines the entire statutory scheme. This footnote is confusing and should be removed.



2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord and believe that this is all they need to do in response to the summons and complaint. However, if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant will have to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress because the statute creates a procedure where the declaration functions similarly to a motion to dismiss⁴: if the declaration is accepted, the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h) and that no default may be entered against the tenant until after the hearing. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place or they are afforded an opportunity to file another responsive pleading. Making this process clear will not only protect the intended tenants but will also streamline court processes and limit unnecessary filings such as premature requests for default and concurrent responsive pleadings.

3. Inequitable Access to Justice

The Judicial Council has proposed two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and for defendants, a simple form

⁴ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

declaration that imposes an additional burden that is not required by the state statute (proposed form UD-104). The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with the new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed form UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se*, which we know are the majority compared to landlords who are almost always represented by counsel, require the opportunity to contest supplemental allegations with check boxes that are *at least* as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights and prevent cases from moving forward and clogging the courts unnecessarily.

To facilitate tenants' ability to respond, the instructions should also require the landlord to serve a UD-104 and attachment on the tenant with the complaint.



In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at-fault just cause *other than* nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or should be provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, the many new forms and rules, and reduced court hours and staff, an even greater number than usual will have to proceed in *pro se* and potentially without even assistance from the court self-help centers. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for *pro se* tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that



1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and/or 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order.

The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration. This provides yet another hurdle for limited English proficient tenants/

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants and further spread of COVID-19. At minimum we request that the Judicial Council make the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.



Thank you for your work in quickly implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me at tiffanyh@advancingjustice-alc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tiffany L. Hickey', with a long horizontal flourish extending to the right.

Tiffany L. Hickey, Esq.
Housing Rights Program
Asian Americans Advancing Justice - Asian Law Caucus
55 Columbus Avenue | San Francisco | California 94111
(415) 237-3630 (google voice) | tiffanyh@advancingjustice-alc.org



From: [Lauren DeMartini](#)
To: [Invitations](#); [Ronan, Anne](#)
Cc: [Hilda Chan](#)
Subject: RE: SP20-06 - Proposed Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 11:58:53 AM
Attachments: [2020.09.17 BayLegal Comment to Judicial Council AB3088.pdf](#)

Please attached BayLegal's comment letter on the proposed court forms to implement AB 3088.

Sincerely,
Lauren

Lauren DeMartini (pronouns: she/her)
Housing Regional Counsel
Bay Area Legal Aid
1800 Market Street, 3rd Floor | San Francisco, CA 94102
415.982.1300 x 6356 (phone) | 415.982.4243 (fax)
www.baylegal.org

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September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov; invitations@jud.ca.gov
Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

We appreciate the Judicial Council's quick action in implementing the complex new laws protecting tenants from eviction during the COVID pandemic. The proposed forms contain much of the needed information to implement the new protections under federal and state law, but this comment letter identifies significant issues and due process concerns. In addition, in order to fully implement the new laws, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training.

1. Serious Due Process Concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading.

If the tenant's declaration of financial distress is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear how the tenant will be made aware of this rejection, given some courts' continued physical closures and limitations to filing only by drop-box, e-filing or fax filing. From our experience, rejection letters from fax filings are being sent out by the clerk's office at least three days after the rejection. Our offices are receiving mailed orders from the court at least one week after the court's date of mailing.

Moreover, it is unclear how and when a tenant will be provided with an opportunity to then file an additional responsive pleading to prevent default if the declaration of financial distress is

rejected. Given the aforementioned delays in receipt of fax-filing-rejections and mailed orders from the court, tenants with rejected declarations would likely face default if these due process concerns remain unaddressed. Tenants should likewise not be required to concurrently file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss¹; if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).)

Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

¹ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

3. **Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)**

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. **Defendant's cover sheet (UD-104)**

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle

for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here."

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for individuals and families who receive an unlawful detainer and cannot access legal aid. These individuals and families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum we request that the Judicial Council make the amendments we describe above and allow adequate time for court staff to be trained on the new protections.

Thank you for your work in implementing these new laws and thank you for considering these comments. If you have any questions, please feel free to contact me at LDeMartini@baylegal.org.

Sincerely,



Lauren DeMartini
Housing Regional Counsel

[1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

[2] Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

From: [Baxter, Comm. James](#)
To: [Davis, Mary Majich](#); [Invitations](#)
Cc: [Dest, Hon. Michael](#); [Poncin Lynn M.](#); [Keh Winston S.](#); [Romero, Anabel](#)
Subject: RE: Comment: Unlawful Detainers: New Forms to Implement Assembly Bill 3088
Date: Tuesday, September 15, 2020 2:08:31 PM

I discussed this with Judge Dest and cross referenced the code sections and I think he has a valid point

From: Davis, Mary Majich <mcDavis@sb-court.org>
Sent: Tuesday, September 15, 2020 12:41 PM
To: invitations@jud.ca.gov
Cc: Dest, Hon. Michael [REDACTED]; Poncin, Hon. Lynn [REDACTED]; Keh, Hon. Winston [REDACTED]; Baxter, Comm. James [REDACTED]; Romero, Anabel <ARomero@sb-court.org>
Subject: Comment: Unlawful Detainers: New Forms to Implement Assembly Bill 3088

To: Judicial Council

The following comments are submitted on behalf of Judge Michael M. Dest

From: Dest, Hon. Michael [REDACTED]
Sent: Tuesday, September 15, 2020 12:37 PM

Just a few comments as to the JC Form UD 101 to relay:

Page 3 of 4

Paragraph 10. b. (2)

The citation to CC 1946.2(8)(e) does not exist

There is a section 1946.2(e)(8) but it does not say what paragraph 10 b. (2) cites.

Where is there the language that “the owner of the property has entered into a contract with a buyer who intends to occupy the property..”?

I find that the Paragraph 10b subparts [(1) and (2)] (the no-fault just causes) misleading. It suggests that there are only two “no-fault” just causes. Paragraph 10 b. is sufficient by itself, however if examples are given, the code provides 4 reasons, of which the two most used are conspicuously omitted:

(A)(i) intent to occupy the residential real property by the owner, or their spouse, domestic partner, children, grandchildren, grandchildren, parents, or grandparents.

(B) Withdrawal of the residential real property from the rental market.

Overall, Form UD 101 is most difficult to follow and a minefield to get correct. It should have a user guide attached explaining how to fill it out. MMD

From: Davis, Mary Majich

Sent: Tuesday, September 15, 2020 9:05 AM

Subject: Request to Comment:Unlawful Detainers: New Forms to Implement Assembly Bill 308812:00 noon on Thursday, September 17, 2020

Importance: High

To: All Judicial Officers, Managers and Supervisors

For your review and comment, please see the request for comment for Unlawful Detainers: New Forms to Implement Assembly Bill 3088

Please note the deadline to submit comments is the day after tomorrow: 12:00 noon on Thursday, September 17, 2020

From: Downs, Benita

Sent: Monday, September 14, 2020 2:19 PM

Subject: New Proposals: Invitation to Comment: Forms, Rules of Court, and Legislation (Special Cycle)

Importance: High

This e-mail is to inform you 1 new proposal (SP20-06) have been posted to the California Courts web site, at <http://www.courts.ca.gov/policyadmin-invitationstocomment.htm>

Civil and Small Claims

SP20-06

Unlawful Detainers: New Forms to Implement Assembly Bill 3088

Summary: The enactment of the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assem. Bill 3088; Stats. 2020, ch. 37) changes the practice and procedures relating to all residential unlawful detainer actions from now until January 31, 2021, and for a longer period for actions based on unpaid rent due at any time between March 1, 2020, and January 31, 2021.

The Civil and Small Claims Advisory Committee proposes three new forms to assist courts and parties in complying with this new law.

Deadline: Review and submit comments by 12:00 noon on Thursday, September 17, 2020

You are welcome to distribute this within your court and to any other interested parties.

If you have any questions, please contact Benita Downs, at benita.downs@jud.ca.gov, or at 415-865-7957.

We greatly appreciate your time and dedication to the continued improvement of administration of

justice in California.

Sincerely,

Benita Y. Downs, Associate Analyst
Legal Services | Leadership Services Division
Judicial Council of California

GARY BLASI
PROFESSOR OF LAW EMERITUS



SCHOOL OF LAW
BOX 951476
LOS ANGELES, CALIFORNIA 90095-1476
Phone: (213) 304-4502
email: blasi@law.ucla.edu

September 16, 2020

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Via email to: invitations@jud.ca.gov

Re: Comment on SP20-06:
Proposed adoption of forms UD-101 and UD-104

Dear Judicial Council:

I write to oppose in the strongest possible terms the adoption of the above two forms for mandatory use in unlawful detainer proceedings in California. No doubt with good intentions, the Civil and Small Claims Advisory Committee proposed adoption of two forms for mandatory use that would effectively throw the enormous practical weight of the Judicial Council against the interests of self-represented tenants – especially tenants of color and those with low incomes – leading to far more evictions and homelessness and raising serious issues of due process, equal protection and discrimination against those living with disabilities and those with limited English proficiency. In a breathtaking example of overreach, the Committee seizes on two screening questions included in AB3088 and an invitation to the Judicial Council to do better to devise what is effectively a form complaint for landlords in the guise of a four page “Plaintiff’s Mandatory Cover Sheet *and Supplemental Allegations*-Unlawful Detainer. *Emphasis supplied*. Notably, the Committee provides no similar service for tenants. In contrast, the “Cover Sheet” the Committee would mandate for tenants will only serve as an obstacle, a barrier and a tripwire for unsuspecting pro per litigants who must respond within five business days to an unlawful detainer complaint (a response that would now include the mandated form) or face rapid eviction. Adoption of these forms would signal to the public either indifference to separation of power and equal justice concerns or, more charitably, basic unfamiliarity with that world occupied by the majority of families in California.

These proposals do not arise in a public health or economic vacuum, but in the middle of the worst public health and economic crisis California has faced in nearly a century. [My own research](#) estimated that as of May 9, 2020, as a result of unemployment caused by COVID-19 in Los Angeles County alone, approximately 365,000 households were at high risk of eviction and potential homelessness. More recent estimates have been significantly higher. The [Aspen Institute](#) estimated that in August more than 1.8 million California renter households were at risk of eviction, which would signal about 600,000 households at such risk in Los Angeles County.

The Committee's proposals also arise in the context of the longstanding vast disparity between the promise and the reality of equal access to justice in California and operate to aggravate that disparity with results that are in the current moment not only unfair but also potentially fatal. To begin, these proposals effectively assume that self-represented tenants have access to the same technology and resources available to every landlord's lawyer. Approximately 95% of landlords in urban areas of California are represented by lawyers in eviction cases, the great majority of cases being handled by a limited number of specialists who have a very strong incentive and the capacity to stay abreast of every possible change in the law, court rules, or actions by the Judicial Council. Approximately 100% of lawyers representing landlords have access to computers, printers, copiers and can easily download and utilize forms mandated for use by the Judicial Council. By contrast, only a small fraction of tenants are represented by lawyers even in ordinary times. But these are not ordinary times. What might have been challenging has become, for many people, close to impossible. [Careful analysis](#) has demonstrated that those tenants most at risk of eviction as a result of the COVID-19 pandemic are heavily concentrated in lower income communities with majorities of people of color where there is even less access to lawyers and no ability at all be alert to changes in court rules in normal times, let alone a mandatory form requirement rushed into place in a matter of days.

Aggravating the Barriers to Access to Justice

During this pandemic, the problems of access to justice are greatly magnified, for several reasons. First, because of the expected filing of a very large number of cases that could not legally be filed before October 5, the need for legal services to respond will increase exponentially. Despite valiant efforts by legal services programs and those who fund them, the practical availability of legal services has declined dramatically as the result of infection control measures necessitated by the COVID-19 pandemic, with tenants being required to make appointments even for "walk-in" clinics.

To fully understand the obstacles created by a mandatory form requirement for self-represented litigants, it is necessary to replace implicit assumptions with facts and common sense. In the real world inhabited by those people at most risk of eviction, homelessness, and the potentially deadly consequences that motivated the recent CDC Order, filing a form mandated by the Judicial Council is not as simple as submitting that form to the court through an Electronic Filing Service Provider from the comfort of an office or bedroom. Below are some of the steps that a tenant must take within the space of five business days in order to avoid immediate eviction:

- A tenant must learn that there IS a mandatory form requirement that was imposed by the Judicial Council within the last two weeks--not a matter of wide public interest or knowledge. In ordinary times, most tenants might learn of the mandatory form requirement only upon traveling to a courthouse on the fifth day after receiving the summons and complaint and then be able to correct the error on the spot. But in these extraordinary times, tenants attempting to do that in Los Angeles who go to the courthouse will learn only that they cannot see a clerk without an appointment. Going back and forth to the courthouse may entail hours of travel on public transportation and then standing in line to get into the courthouse, all of which increases exposure to infection with the COVID-19 virus.
- Upon learning that an appointment was necessary (assuming the time for filing has not expired), a tenant can either make an appointment to see the clerk or use a drop box to attempt to file a document, only to have that document rejected by the clerk because it did not come in the mandated form .

- Having learned that a form is mandatory, tenants must have or find access to a computer, an internet connection, a printer and, for many, someone who knows how to use all these things. Then they must download the form and either complete the fillable fields on the computer and print it or print the blank form and attempt to complete it by hand. Many households that do have computers do not have printers.
- Assuming access to a printer, a tenant must find a copier and make copies of the mandatory form for service on the other parties. Assuming the tenant has learned that there are proof of service forms available for download (inconveniently not mentioned in the mandatory form instructions) those forms can be printed and copied as well, if the tenant has a printer.
- Because the tenant cannot sign the proof of service, the tenant must find another person over the age of 18 who is willing to complete and mail the mandatory form along with a copy of the proof of service and then sign the proof of service under penalty of perjury. All of which entails having envelopes, postage and a friend or relative over the age of 18 willing to both take something to the post office and sign something under penalty of perjury saying they have done so.
- Having done all of the above, the tenant can try to make an appointment with the court clerk or follow other COVID-19 restricted procedures to gain access to the clerk's office, travel (again) to the courthouse, often on public transportation, stand in line to gain access to the courthouse (again) and attempt to file the mandatory form and proof of service.
- All the foregoing is even more complicated for people with limited English Proficiency, who must find a translator to translate the content of the declaration into English and then sign the translation which must be attached to the signed declaration.
- For people with mobility or visual impairments, take the difficulty of all the above and multiply by ten.

For those who have never been poor, or poorly educated, or unfamiliar with legal procedures, all the above may seem an essentially trivial part of the process. But after working with people in poverty as a lawyer for forty-four years, I can assure you that these matters are far from trivial. Indeed, they are not trivial for beginning secretaries and paralegals. For poor and working people in the real world, the requirement of a *mandatory* court form can require hours of effort under intense time pressure and, in the current public health crisis, increased risk of infection with the COVID-19 virus and all that can follow, both for tenants and their families. The price of failure is losing an unlawful detainer by default and physical eviction of an entire household within two or three weeks. In Los Angeles County, the average household with one person in the workforce also has 1.53 children.

The Appearance of Partiality and Favoritism

In contrast to the roadblock the Civil and Small Claims Advisory Committee would place before unrepresented tenants, the mandatory form proposed for plaintiff landlord is a guide to successful eviction, thanks in part to the "supplemental allegations" the Committee has grafted onto what was in the legislature a two question cover sheet that captured two pieces of information (whether the subject property is residential or commercial, and whether the action is based on nonpayment of rent). The

intent of the legislature is captured in the first two paragraphs of the Committee's draft, which then goes on for four pages of allegations, many of which have nothing at all to do with AB3088, including allegations about the recent CDC public health order. To cite another example, the notice upon which an unlawful detainer complaint is based is already required by C.C.P. §1166(d) to be attached to the complaint and is, quite obviously, the best evidence of its content. What purpose is served by providing the landlord's lawyer the means to characterize the legal adequacy of a notice already before the court? Perhaps providing a detailed checklist of the substantive legal requirements of a complaint under the complicated legal regime enacted by the legislature in AB3088 (as well as the CDC) is a worthwhile use of the Judicial Council's resources.

But one must ask, *where* is the analogous checklist for all the affirmative defenses an unrepresented tenant might include in an answer to the complaint? Whatever intentions might be attributed to the Committee, approval of the recommendations will provide the appearance that the Judicial Council is putting its considerable thumb on the scales of justice for those who are blessed to have lawyers as well as property and against those who have neither.

The Judicial Council should reject the proposed adoption of forms UD-101 and UD-104. The Judicial Council should, instead, direct its committees and all courts in California to attend to the realities faced by hundreds of thousands of unrepresented litigants who are also trying both to survive and to obtain some measure of justice in the present crises. They should do that not only in the form of occasional reports decrying the lack of equal access to justice but also in considering the implications for that principle of every rule and form they recommended for adoption or approval by the Judicial Council.

Very Truly Yours,

A handwritten signature in black ink that reads "Gary Blasi". The signature is written in a cursive style with a large initial "G".

Gary Blasi
Professor of Law Emeritus

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 10:36:45 AM

Proposal: SP20-06
Position: Agree if modified
Name: John W Cadwalader
Title: Attorney
Organization: Law Office of John W Cadwalader
Comment on Behalf of Org.: Yes
Address: 1233 W Shaw Ave Suite 106
City, State, Zip: Fresno CA, 93711
Telephone: 5592213111
Email: johnw@cadwaladerlaw.com
COMMENT:

My comments will focus on proposed Form UD-101. I believe the form needs modifications to comply with CCP 1179.01 et seq (CTRA). I am an attorney who regularly practices in the area of unlawful detainer law.

I believe the judicial council is far exceeding the intent of the legislature with proposed UD-101. The legislature enacted a simple proposed supplemental cover sheet that was not required to be signed under penalty of perjury. The Judicial Council is proposing what is essentially a mandatory complaint for unlawful detainer cases. As a mandatory form, it must be used in all unlawful detainer cases and must therefore be inclusive of all possible permutations of unlawful detainer causes of action. For example, UD-101 does not take into account the scenario where a residential property is rented to an entity and therefore exempt from the requirements of CTRA (See CCP 1179.02(h)). UD-101 also does not take into account the arguable inapplicability of the CTRA to termination of tenancies-at-will (tenancies of an indefinite period without payment of rent) which may be exempt as the tenant is not "hiring" the real property (Civil Code Section 789; Covina Manor v. Hatch (1955) 133 CA2d Supp 790, 792-793).

I believe the form also inaccurately states the law. For example paragraph 5 of UD-101 (and the background document provided with the invitation to comment) state that if the case is based on rent due before March 1, 2020, then no further information need be required under CCP 1179.03.5(a)(1). This is incorrect. CCP 1179.03.5(a)(1) provides that "The tenant was GUILTY (emphasis added) of the unlawful detainer before March 1, 2020." For a tenant to be guilty of unlawful detainer a proper termination notice must have been served and expired by February 29, 2020. If I were to serve a 3-day to pay or quit now demanding February 2020 rent, the applicable provision allowing the case to move forward would be CCP 179.03.5(a)(3)(A)(i) [that is an at-fault just cause]. To illustrate the issue with the form's argument let's consider that a landlord could now in September serve a 3-day to pay or quit demanding February 2020 rent and obtain a judgment including COVID-19 rental debt holdover damages through the date of entry of judgment, even if the tenant has properly submitted declarations of hardship. On the same issue, UD-101 is not inclusive of a case where, for example, a landlord properly served a 30-day notice to quit that expired February 20, 2020. That would be a proper exemption under CCP 1179.03.5(a)(1) because the tenant is GUILTY of the UD before March 1, 2020 but there is no place to so indicate on the UD-101.

I also fail to understand the "Filed with (title of document, if any):" language on the top of the form. I am not sure why that is important and it is confusing. For example, I would expect that this form would frequently be filed at the same time as default packets in cases filed before October 5, 2020 which frequently include request for entry of default, proofs of service of summons, and judgment forms. Which document name should be entered on that line as the UD-101 being filed with? And why is it important especially given that it can be filed alone and not with any other document in cases filed before October 5, 2020?

Also, I believe language in paragraph 6a of UD-101 is exclusionary. It appears to require a form titled "Notice from the State of California" but many landlords using forms from the California Apartment Association will use Form CA-400 titled "Informational Notice of COVID-19 Tenant Relief Act of 2020" which contains the required language but the differences in titles may confuse the clerks. Perhaps the language in the form should be more

generic and simply request a notice with complies with the requirements of CCP 1179.04. Also, each of the 15-day notices for protected and transition period require specific "Notice from the State of California" language and the use of the title is confusing in the form.

Paragraphs 6(c) and 8(a) of UD-101 refer to 15-day notice to pay, quit, or deliver a declaration. I think the language should be changed to reflect "was served with at least 15-days' notice to pay, quit...". Many practitioners are using notices which allow 15 days to pay or deliver a declaration, but 30 calendar days to vacate to ensure compliance with federal CARES Act moratorium. The existing form language is not inclusive of that type of notice and seems to imply that only a 15-day notice can be used when the language in the cited code section only requires "at least" 15 days' notice.

I believe the references in form UD-101 to UD-100 are exclusionary of attorney-prepared complaints. I think a qualifier such as "if used" would be appropriate.

I understand the Judicial Council's motives are good, but to enact such a restrictive and arguably inaccurate mandatory form is inappropriate and will only serve to confuse clerks and the judiciary as to the requirements of the CTRA. As noted in the background document, the committee's first thought to not produce such a form including allegations was likely the best. The parties should be permitted to fully litigate the requirements of the CTRA without being handicapped by the Judicial Council.

I propose that instead of this mandatory form, that parties be allowed to use an optional declaration form for entry of clerk's or court's judgment similar to the UD-116. This would allow most cases to proceed with the judicial council form and also allow litigants to argue the law in more esoteric scenarios described above. (Perhaps with a comment that the form was rushed and may not apply to all situations.)

Also it is not clear to me if the proposed UD-101 is required to be served to the defendant, and how it would be required to be served. For example, would it be served with summons and complaint in new cases filed on or after October 5 and simply mailed in cases filed before October 5? Would there be a difference in complex cases where civil case cover sheet has to be served? I expect this would be an area of confusion with clerks and some direction would be helpful so practice is consistent across counties.

Please excuse any grammatical errors in these comments as I only became aware of the proposed form shortly before the deadline for comments to be submitted. I may be contacted at my office 559-221-3111 or via email johnw@cadwaladerlaw.com

CALIFORNIA ACCESS TO JUSTICE COMMISSION

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Senior Coordinator

September 17, 2020

Via Email (anne.ronan@jud.ca.gov)

Anne M. Ronan
Judicial Council Of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: Invitation to Comment SP20-06: Unlawful Detainers: New Forms to Implement AB 3088

Dear Ms. Ronan:

For over 20 years, the California Access to Justice Commission (CAJC) has worked toward achieving equal access to justice for all Californians. We appreciate the Civil and Small Claims Advisory Committee's efforts to adopt new forms to assist courts and parties in complying with the new Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assembly Bill 3088). To ensure equal access to justice for all parties in the case, we think it is important that the forms provide adequate information and appropriately detailed checklists for all litigants. The law is extraordinarily complex and without adequate and detailed information, pro per litigants will not be able to either understand or protect the rights afforded to them by AB 3088. We also offer comments to help ensure that self-represented parties have the information needed under the new laws and procedures, including the almost 1 million families across the state who are at risk of eviction, and to assist courts in complying with this new law.

- **Ensure the forms provide equitable access to all litigants.** The proposed mandatory forms do not address serious access to justice issues resulting from the COVID-19 pandemic and the new set of complex rules and tenant protections passed as part of AB 3088. Before adopting new forms, we suggest the Civil and Small Claims Advisory Committee consider taking steps to make sure information and access is provided equitably to all parties, not just plaintiff landlords. The proposed form UD-101 provides a checklist for landlords to move forward with eviction lawsuits, and courts to potentially enter default judgments in UD cases. It does not provide a similarly detailed checklist for tenants regarding defenses they are entitled to raise in the proceeding. The detailed checklist for landlords is not required by AB 3088 and may unintentionally undermine the intent of the law providing emergency tenant protections to reduce or avoid evictions during the public health and economic crisis. We suggest before implementing these new forms that the Committee consider how to ensure that information about the new tenant protections can be effectively provided to all parties and potential parties during the pandemic to avoid unnecessary UD cases.
- **Proactively provide information about the new residential tenant protections on Court websites, LawHelpCa.org, and in self-help centers.** Parties in residential unlawful detainer cases will need to understand the new protections for residential tenants and what steps need to be taken in advance of filing an eviction complaint. Before creating a new UD complaint form, we encourage the Judicial Council and local courts to provide information for landlords and tenants about the new protections and

CALIFORNIA ACCESS TO JUSTICE COMMISSION

steps that must be taken to potentially resolve issues and disputes without need for an unlawful detainer action. This would potentially reduce the number of unlawful detainer filings and also potentially minimize the need for defendants to file a declaration of COVID-19-related financial distress after service of an unlawful complaint, instead of within 15 days after receiving a pre-complaint eviction notice. We also have concerns about the proposed UD-104 and UD-104(a) being mandatory, which is a new requirement for tenants. Because the new rules are complex, and many litigants in eviction court are self-represented, we encourage the Judicial Council to not rush these new forms, and instead provide information, resources, and referrals to parties and potential parties so they are better able to understand the new rules prior to cases being filed. This includes related to the federal Centers for Disease Control and Prevention (CDC) agency order temporarily halting evictions for failure to pay rent on public health grounds and the required hardship statement, the declaration of COVID-19-related financial distress under state law, and the requirement to pay the 25 percent minimum for rents due between September 1, 2020 and January 31, 2021, among other information and resources.

- **Consider creation of new forms to address the expected influx of UD/collection cases.** Actions to recover the unpaid rent for the period March 1, 2020, and August 31, 2020 (the protected period) and for the period September 1, 2020, and January 31, 2021 (the transition period), may be brought in small claims court even if they are over the jurisdictional amount. As noted, there is additional time to plan for these cases because they cannot be brought in small claims court until March 1, 2021. We expect it will be helpful to create new forms for these cases, and, therefore, we encourage the Civil and Small Claims Advisory Committee to create proposed new forms with sufficient time for comment by the public and consumer-debt advocates.

Sincerely,



Judge Mark Juhas

Chair

From: [Heidi Palutke](#)
To: [Invitations](#)
Cc: [Debra Carlton](#); [Jasperson, Cory](#)
Subject: CAA Comments on Item Number: SP20-06
Date: Thursday, September 17, 2020 10:49:58 AM
Attachments: [091720 Judicial Council Form Comments - Final.docx](#)

Attached please find the comments of the California Apartment Association on Item Number SP20-06: Unlawful Detainers: New Forms to Implement Assembly Bill 3088.

Please don't hesitate to contact me if you have any questions.

[Heidi Palutke](#) - Senior Vice President Compliance and Education
California Apartment Association
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*CAA is your partner in the rental housing industry.
[Find out how we're working for you.](#)*



Quality Housing • Ethics • Professionalism



September 17, 2020

Hon. Ann I. Jones
Chair, Civil and Small Claims Advisory Committee
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102

Via email to invitations@jud.ca.gov

Comments of California Apartment Association on SP20-06 (Unlawful Detainers: New Forms to Implement Assembly Bill 3088)

Dear Hon. Ann I. Jones:

The California Apartment Association (CAA) is the largest statewide rental housing trade association in the country, representing more than 50,000 owners and operators who are responsible for nearly two million rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing and to promote and aid in the availability of high-quality rental housing in California. CAA represents its members in legislative, regulatory, judicial and other state and local forums.

CAA was a key stakeholder in the negotiations that resulted in the passage of AB 3088 and appreciates the opportunity to comment on these forms and the forthcoming small claims forms. CAA's specific comments on the proposed forms appear below.

I. Plaintiff's Mandatory Cover Sheet and Supplemental Allegations – Unlawful Detainer (form UD-101)

AB 3088 included the text for a supplemental coversheet to be filed in unlawful detainer cases, the purpose of which was to allow the court to determine whether the action was seeking possession of either residential or commercial property. In the case of actions to recover residential property, the supplemental cover sheet was also intended to inform the clerk as to whether the action is based on non-payment of rent or other charges. This supplemental coversheet was intended to enable the clerk to issue a summons and/or enter default in cases, as allowed by law, prior to October 5, 2020, for those cases that do not seek payment of rent or other charges.

While CAA had hoped that a coversheet limited to the minimum statutory text would be available soon enough to achieve this statutory goal, CAA recognizes and appreciates the longer-term utility of the Council's approach. The additional allegations to be pled by plaintiffs should streamline the court's review of these cases and help retain the summary nature of unlawful detainer proceedings. CAA specific comments on the items in the form are included below.

A. Centers for Disease Control and Prevention (CDC) Order – Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

Item 4 of the proposed form includes a check box for the plaintiff to indicate whether the defendant provided a hardship statement that triggers protections under the CDC’s order. For several reasons, discussed in detail below, CAA believes it is premature to include reference to the CDC in official forms.

The primary issue with the CDC order is the question of whether it applies at all in California. The CDC order provides that it does “not apply in any State, local, territorial, or tribal area with a moratorium on residential evictions that provides the same or greater level of public-health protection than the requirements listed in this Order.” CAA’s position is that eviction protections enacted by AB 3088 provide “the same or a greater level of public-health protection” as the CDC order. CAA is engaging with the federal administration to obtain clarification on this issue and expects to have something from the administration in the coming weeks.

Even if the CDC order is found to be applicable despite the robust eviction protections enacted by AB 3088, many cities and counties in California have local eviction moratoria that provide greater protections (for example in the City of Los Angeles) – which may render the CDC order inapplicable in those areas.

CAA also expects the validity of the CDC order to be challenged by individuals and interest groups given that it is an unprecedented use of CDC authority. Even to the extent the CDC order is found to be valid and applicable in California, there are also serious questions as to how the CDC order operates. For example, the CDC prohibits “eviction” of a covered person, but it’s not clear what is considered an “eviction.”

In light of these issues, CAA recommends the CDC order not be referenced on official forms until such time that the applicability and, to the extent the CDC order is applicable, the interpretation of how the CDC order operates, has been determined.

B. Other Comments Regarding Proposed UD-101

Instructions below Caption: The first sentence of the instructions would be clearer if revised as follows:

“Any plaintiff filing a complaint for unlawful detainer on or after October 5, 2020, or requesting any court action in an unlawful detainer proceeding filed between August 31, 2020, and October 5, 2020, must complete all sections of this form applicable to the action.”

It would also be helpful if this instruction could provide greater clarity as to when exactly a plaintiff must file this form. As CAA understands it, this form is required when a judgment or dismissal has not yet been entered and the plaintiff is requesting the court to take an action such as entering default or setting a trial.

Proposed Items 2(c) and (d): As noted in footnote 3 of the Invitation to Comment, AB 3088 defines the term “tenant” and only applies its eviction protections to tenants, as defined. In addition to excluding commercial tenants, Code of Civil Procedure section 1179.02(h) further limits the application of AB

3088's protections to: (a) tenants who are natural persons, and (b) tenancies that are not occupancies under Civil Code section 1940(b) (i.e., transient occupancy).

CAA recommends that new item 2(c) and (d) be added to allow a plaintiff to indicate whether the provisions of AB 3088 do not apply because of these limitations in the definition of "tenant," as follows:

"c. Defendant (name each) is not a natural person. (If item 2c is checked, no further items need to be completed except the signature and verification.)

d. Defendant's (name each) occupancy of the premises is an occupancy as described in Civil Code section 1940(b). (If item 2d is checked, no further items need to be completed except the signature and verification.)"

Item 3: This item asks if the action is based in whole or in part on the non-payment of rent or other charges. If the plaintiff checks the "No" box, the plaintiff should be directed to skip sections 4-9, since these are related only to non-payment of rent.

There are also missing words in this section: "This action is based, in whole or in part, on an alleged default in the payment of rent or other charges."

Item 4: See comments regarding the CDC order above.

Items 5, 6, 8 and 11: The references to "rent" in these items, should be to "rent and other charges" as in item 3. The eviction protections of AB 3088 are not limited to non-payment of rent, but also apply to non-payment of other amounts that may be due under the lease, such as utilities, parking fees, and damages. Similarly, the reference to "a 15-day notice to pay, quit or deliver a declaration" should refer to "a 15-day notice to pay rent or other charges, quit, or deliver a declaration." The 15-day notice at issue may be a 15-day notice to cure, that is seeking the payment of other charges due under the rental agreement.

Item 6(a): This item requires the plaintiff to allege that they served the informational notice required by AB 3088 when the tenant has not paid rent that came due between March 1, 2020, and August 31, 2020. While CAA has no issue with the substance of this item, CAA has one technical concern. Specifically, the plaintiff must allege that the informational notice they serve was titled "Notice from the State of California." CAA's form to comply with this requirement is entitled "Informational Notice of COVID-19 Tenant Relief Act of 2020," though it includes the entire required statutory notice, starting with the words "Notice from the State of California." CAA is concerned language in item 3 regarding how the form is titled is unnecessary and will cause confusion and needless disputes. CAA recommends the following revision to address this concern:

"Defendant (name each) was served a form titled the "Notice from the State of California" as mandated in Code of Civil Procedure section 1179.04..."

Items 6(d)(3) and 8(b)(3): Items 6(d) and 8(b) require the plaintiff to specify how each defendant responded to the 15-day notice; however, items 6(d)(3) and 8(b)(3) are inconsistent with the other

items in 6(d) and 8(b) as they are not related to a defendant's response. Instead, items 6(d)(3) and 8(b)(3) are the plaintiff's allegations that indicate whether the notice required the defendant to submit documentation in addition to their documentation of COVID-19-related financial distress because the plaintiff alleges the defendant is a high-income tenant. This information would be better included as standalone subsections to items 6 and 8, rather than as subordinate pieces of items 6(d) and 8(b).

Item 8(c): As drafted, this item does not recognize that the requirement to pay only 25% of the rental payments due in order to avoid eviction applies to those unpaid amounts the tenant provided a declaration. If the tenant did not provide a declaration for a particular month – the 25% requirement does not apply and the full rental payment is due for that month.

CAA recommends that this item be revised to simply require the plaintiff to plead that the defendant either did, or did not, make the payment required by law. If this allegation is contested, the dispute could be determined by a judicial officer based on the evidence presented by the parties. CAA recommends the following text to replace item 8(c):

“Defendant (name each) [] did [] did not make the payment required by Code of Civil Procedure section 1179.04(g)(2)(B) by January 31, 2021.”

Item 10: The instructions in parentheses could be clearer. A tenancy can be subject to the Tenant Protection Act of 2019 (“TPA”) or exempt. AB 3088 requires landlords of exempt properties, to state a just cause (from the TPA list in Civil Code section 1946.2) for termination, but those properties are still “exempt” from the TPA. This means that those exempt properties are arguably “subject to” part of 1946.2, even though they are not subject to the TPA. CAA recommends revising the instruction as follows.

“Note: if the plaintiff must indicate in Item 7 of form UD-100 whether the tenancy is subject to the Tenant Protection Act of 2019 (including Civil Code 1946.2), and, if the property is not exempt the plaintiff must complete item 8 on form UD-100 in addition to this item.”

Item 10(c): The instruction for this item is misleading, as it suggests that the plaintiff can never recover rental debts as damages in the action. In fact, the limitation specified in Code of Civil Procedure section 1179.03.05(a)(3)(B) is only on cases that are not based on non-payment of the rent or other charges sought. An example best illustrates this issue:

If a landlord served a 15-day notice to pay rent or quit and the tenant failed to return the declaration of COVID-19-related financial distress (and documentation, if required for a high-income tenant), and also failed to either pay the amount due or deliver possession of the premises, the landlord would be entitled to proceed with an unlawful detainer on or after October 5, 2020. In that case, the plaintiff would check item 10(a), because the case is based on a cause listed in Civil Code section 1946.2(a) – namely, default in the payment of rent. However, the plaintiff would *not* be barred from recovering damages in this case because the tenant failed to comply with the requirements of Section 1179.03, which is an express exception from the bar to recovery of damages in Code of Civil Procedure section 1179.03.05(a)(3)(B).

CAA recommends the following revision to correct this issue:

“This action is not based on non-payment of rent or other charges and is based solely on the one or more causes of termination checked in item 10a or b above other than non-payment of rent or other charges. (If this item applies, plaintiff may not recover any rental debt due for the period between March 1, 2020, and January 31, 2021, as part of the damages in this action. (Code of Civ. Proc. § 1179.05.5(a)(3)(B).)”

Proposed Item 10(d): Item 10 should include a statement for the plaintiff to plead that the case is based on an allegation that the defendant was guilty of unlawful detainer prior to March 1, 2020. (See Code of Civil Procedure section 1179.03.5(a)(1), which allows the court to decide such a case prior to February 1, 2021). The defendant could be guilty of unlawful detainer under a number of different circumstances, unrelated to the payment of rent and other charges. For example, if a tenant was given a 60-day notice of termination in December 2019 that expired in February 2020, but the tenant failed to vacate the premises as required, the tenant would have been guilty of unlawful detainer prior to March 1, 2020.

Item 11: Rent due after January 31, 2021. CAA suggests that this item be omitted. After January 31, 2021, a landlord may have grounds to file an unlawful detainer action for rent due February 2020, and/or in any of the preceding months, including prior to March 1, 2020. Further, the Legislature has indicated that AB 3088 was merely a stopgap measure, and CAA anticipates that prior to the February 1, 2021, additional provisions will have been enacted that extend or change the protections against eviction from AB 3088. Accordingly, CAA recommends that this form not address unlawful detainer actions filed after January 31, 2021 at this time.

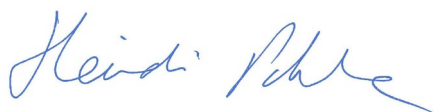
II. Coversheet for Declaration of COVID-19-Related Financial Distress (form UD-104)

CAA recommends that the introductory paragraph below the caption tell the defendant that the declaration form is only relevant only if the termination at issue is for non-payment of rent or other charges. CAA also recommends that the instructions clarify that the declaration only be filed if the defendant alleges that they cannot pay the amount demanded in the 15-day notice because they have suffered COVID-19-related financial distress, in order to avoid defendant’s submitting erroneous declarations and inadvertently perjuring themselves.

Thank you for your consideration.

Respectfully,

CALIFORNIA APARTMENT ASSOCIATION



By

Heidi Palutke

Senior Vice President Compliance and Education

California Legislature

Judicial Council of California
Civil and Small Claims Advisory Committee
Via Email: invitations@jud.ca.gov

September 17, 2020

RE: Comments on Proposed Memo and Forms for Implementation of AB 3088

Dear Chair Jones, Vice-Chair Seligman, and Advisory Committee Members:

Thank you for the hard work that you and your staff have put into the rapid implementation of AB 3088 (Chiu, Chap. 37, Stats. 2020). This new law is meant to safeguard the health and well-being of millions of Californians by keeping them in their homes. The measure must be implemented with that intent in mind. Large numbers of Californians will be exercising their legal rights under this law and interacting with the courts without the benefit of legal counsel. It is particularly important, therefore, to avoid imposing artificial and arbitrary barriers that could prevent economically distressed Californians from accessing the protections the bill is meant to provide.

With that in mind, we write to provide comments on the draft forms and memo that the Judicial Council has proposed for use in implementing AB 3088. While much of the draft forms and the memo accurately and effectively reflect AB 3088, we are concerned with a number of the details: (1) the draft form and memo impose some requirements on tenants that the underlying statute does not; (2) they unnecessarily and confusingly suggest that evictions for non-payment might somehow be permissible as “at fault” evictions when the entire purpose of the bill is to restrict evictions for nonpayment until after January 31, 2021; (3) they employ convoluted language in places where plain text would be sufficient; and (4) they may not capture all of the applicable federal law, including the Center for Disease Control’s (CDC) September 4, 2020 Order, that currently restricts many residential evictions.

Our specific comments are as follows:

- On page 3 of the draft memo, footnote 6 goes into a lengthy discussion (for a footnote) about how AB 3088 permits “at fault” evictions to proceed immediately. Since non-payment of rent is one form of “at fault” eviction, the footnote goes on to ponder whether perhaps non-payment of rent cases can be brought immediately. It then astutely observes

that such an interpretation is absurd, as it would undermine the entire and obvious intent of the bill, which is to prevent eviction for nonpayment until January 31, 2021.

Nonetheless, the footnote concludes that “should the issue arise, this determination will need to be made by a court and so is not directly addressed in the proposed forms.” We respectfully suggest that this footnote creates an ambiguity and confusion where none would otherwise exist. It is contrary to the intent of the bill and risks creating conflicting interpretations among superior courts, an unacceptable state of affairs for urgency legislation that provides protections for four months and therefore does not present the luxury of appellate review. The footnote should be rewritten to make clear that “at fault” evictions for nonpayment are prohibited under the bill.

- Regarding proposed UD-101 generally, the form does not appear to capture the full range of federal protections against eviction. In particular, in consideration of the fact that federal law prohibits owners of multi-family buildings from evicting tenants while the owner is in forbearance on a federally backed loan and for an additional thirty days afterward (15 U.S.C. § 9057(d)), the form should contain an additional section requiring the Plaintiff landlord to plead whether or not the property is subject to a federally backed loan and, if so, whether that loan is currently in forbearance. Also, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the form should alert plaintiffs of the potential civil and criminal penalties for violation of these protections.
- Regarding the proposed Cover Sheet for Declaration of COVID-19 Related Financial Distress generally, we do not believe this form should be mandatory. No such form is mentioned in the statute and making it mandatory imposes an unnecessary barrier to filing the underlying Declaration with the court. We understand that it would facilitate the clerks’ work if tenants use the cover sheet and we have no problem with encouraging tenants to use it. Unfortunately, however, most tenants will be unrepresented. Making the Cover Sheet mandatory means that clerks will reject perfectly-valid declarations simply because a form has been omitted. The statute does not contemplate that a tenant would face eviction for this reason. Instead, if for some reason a tenant does not use the Cover Sheet, clerks should be instructed to do their best to file the Declaration without it. It would be further helpful to tenants if this form advised tenants to seek legal advice through lawhelpca.org and included a copy of the CDC declaration for tenants to complete and sign.
- On page 1 of 2 of the proposed Cover Sheet for Declaration of COVID-19 Related Financial Distress, the statement in the box that an English language version of the Declaration must be filed should be deleted. There is no such requirement anywhere in

the statute. While the cross-referenced section of the Code of Civil Procedure may require all filings to be in English, AB 3088 is a subsequently-enacted, more-specific statute and must be read on its own terms. If the Judicial Council's concern is that the court will not know what the content of the Declaration is, then, at a minimum, the form (and any associated case handling) should indicate that any version of the form produced by the Department of Real Estate pursuant to Code of Civil Procedure Section 1179.03(d) is acceptable. Any other approach would undermine the clear intent of the bill to ensure that limited English proficient tenants have equal access to the protections afforded by the bill while needlessly introducing another bureaucratic hurdle for pro per tenants to overcome.

- On page 1 of 2 of the proposed Cover Sheet for Declaration of COVID-19 Related Financial Distress, the statement in the box that the Defendant must serve a copy of the Cover Sheet on the Plaintiff should be deleted. There is no such requirement anywhere in the statute. It creates a barrier for pro per litigants who are unlikely to understand the nuances of service of process. Moreover, it is an unnecessary step since the Plaintiff will get notice of the resulting time and subject of the hearing directly from the court.
- On page 1 of 2 of the proposed Cover Sheet for Declaration of COVID-19 Related Financial Distress, the language at (2) is unnecessarily convoluted and likely to confuse pro per litigants. We would suggest replacing it with something simpler, like: (1) a check box allowing the tenant to assert that they did serve either an AB 3088 declaration of financial distress or a declaration of financial hardship pursuant to the CDC order and (2) an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days after receiving the notice to pay rent, vacate, or return the signed declaration, please explain why you did not."
- On page 2 of 4 of the proposed UD-101 at 6(d)(3), the language is confusing as to who is making the request. It currently reads as if the Defendant requested submission of additional financial information, when it is the Plaintiff landlord that must make such a request. We would suggest, instead: "Defendant ____ (name each) was served with a 15-day notice to pay, quit, or deliver a declaration. The notice identified defendant as a high-income tenant and requested that the defendant submit documentation supporting any declaration the tenant submitted." The same problem and suggestion applies to 8(b)(3) on page 3 of 4 of proposed UD-101.

- On page 3 of 4 of proposed UD-101 at 8(c), the year in the parenthesis should be 2021, not 2020.
- On page 3 of 4 of proposed UD-101 at 10(a), the phrase “other than nonpayment of a financial obligation pursuant to the lease” should be inserted between “1946.2(b)(1),” and “which” to avoid any possible confusion.

Thank you for your consideration of these comments. If you have questions or we can provide you with any further information, please do not hesitate to call upon us or our staffs.

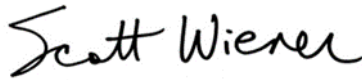
Sincerely,



Hannah-Beth Jackson, Chair
Senate Judiciary Committee



Mark Stone, Chair
Assembly Judiciary Committee



Scott Wiener, Chair
Senate Housing Committee



David Chiu, Chair
Assembly Housing and Community
Development Committee



Nancy Skinner, Chair
Senate Budget Subcommittee Five



Shirley Weber, Chair
Assembly Budget Subcommittee Five

From: [Harris, Jaclyn](#)
To: [Invitations](#)
Cc: [Bee, Maria](#)
Subject: Comment on New Forms to Implement AB3088; Item No. SP20-06
Date: Thursday, September 17, 2020 12:07:51 PM
Attachments: [Comment on New Forms to Implement AB3088; Item No. SP20-06.pdf](#)

Good morning,

Please find attached our comment on New Forms to Implement AB3088; Item No. SP20-06.

Thank you for the opportunity to comment on the proposed forms.

Sincerely,

Jaclyn Harris
Neighborhood Law Corps Attorney
Oakland City Attorney's Office

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ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

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(510) 238-3814

September 17, 2020

VIA EMAIL ONLY - invitations@jud.ca.gov

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

RE: Comment on New Forms to Implement Assembly Bill 3088; Invitation to Comment; Item No. SP20-06

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

I am writing to offer feedback on the Judicial Council’s proposed forms related to the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020. During this time, it is critical that tenants understand the procedures they must follow to enforce their rights, and landlords provide courts with the information necessary to evaluate their cases under state law. Below, I have provided comments on each of the forms posted for consideration by the Judicial Council. I hope that they are useful to you in improving the quality and clarity of the forms.

I. Defendants’ Forms: UD-104 and UD-104(A)

The purpose of UD-104 and UD-104(A) is to assist vulnerable tenants with asserting their rights under AB3088. The current versions, however, do not provide tenants with clear guidance regarding UD-104’s function or the potential negative consequences of failing to submit the form and declaration. Without this context, tenants who AB3088 is designed to protect may not understand the forms’ significance and inadvertently neglect to file them. Tenants should be advised that the eviction action may proceed if they do not submit the declaration and UD-104, and the court could ultimately exercise its discretion to dismiss the lawsuit if they do. This information and the filing deadline (within five days of service of the summons and complaint) should be displayed prominently on the form (i.e., in bold).¹

¹ Paragraph two of UD-104 indicates that the court may dismiss the case “if failure to provide the declaration was due to mistake, inadvertence, surprise, or excusable neglect.” This clarification would be more useful to include at the top of the form.

There are also aspects of the forms that could be revised to avoid confusion and improve clarity. With respect to UD-104, tenants may not realize that a hearing will be set regardless of whether they offer a written explanation for failing to provide the declaration in the text box under paragraph two. Incorporating a sentence stating that checking the box is sufficient and there is no penalty for presenting the explanation at the hearing could help reduce misunderstandings. Tenants may also benefit from receiving instructions at the beginning of UD-104(A) concerning the form's purpose and when it should be submitted. Although this information is outlined in UD-104, it is worth repeating on the attachment, which is a separate form.

Finally, because defendants must file UD-104, the declaration, and any English translations within a short period of time, it is especially crucial that tenants who cannot read or write in English are able to quickly understand the requirements. If possible, the instructions should be translated into Spanish, as they are on the Judicial Council form for unlawful detainer summons (SUM-130). The form could also include information regarding how to obtain free or low-cost translation services, and tenants who prepare their declarations in a non-English language could be given additional time to file translated versions.

II. Plaintiffs' Mandatory Cover Sheet and Supplemental Allegations (UD-101)

While UD-101 is significantly more straightforward than defendants' forms, there are a few paragraphs that could be refined to better assist courts with their determination regarding the disposition of the action:

- Where the unit in question is rented for commercial *and* residential use, plaintiffs should be instructed to check both boxes under paragraph two and complete all of the required items for residential properties. Plaintiffs could misconstrue the current version of the form as only permitting them to check one box.
- Plaintiffs who are not filing UD-101 with UD-100 should be required to provide information regarding service of the 15-day notice and unsigned declaration, and attach a copy to UD-101. At present, the form directs plaintiffs to include this service information and documentation with their unlawful detainer complaint. If plaintiffs are not filing their complaint and UD-101 concurrently, they seem to be exempt from this requirement.²
- Paragraphs 6(d), 8(b), and 9(b)-(c) ask the plaintiff whether the tenant "delivered" the declaration "in the time required." Plaintiffs may misinterpret this language, as declarations are deemed received on the day they are posted for mailing under

² Plaintiffs may have filed eviction actions before the Judicial Council's April 6, 2020 moratorium related to nonpayment of March 2020 rents. These plaintiffs are also required to provide tenants with the 15-day notice and unsigned declaration before requesting judicial action on their case.

AB3088. (*See* Civ. Code, § 1179.03(f)(3).) Asking when the declaration was “sent or delivered” may be a more intuitive way of phrasing these questions.³

By incorporating these changes, the Judicial Council could limit the number of cases that are mistakenly permitted to proceed or set for hearing.

Thank you for the opportunity to comment on the proposed forms.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Maria Bee". The signature is fluid and cursive, with a horizontal line separating the first and last names.

Maria Bee
Chief Assistant City Attorney

³ The Judicial Council could also add a box for the plaintiff to check if the tenant submitted an untimely declaration, and allow the plaintiff to provide the date of receipt. This may help the court identify cases where the tenant made a good faith effort to comply, and is likely to submit UD-104.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 7:58:40 AM

Proposal: SP20-06
Position: Agree
Name: Christine Copeland
Title: Commissioner
Organization: Santa Clara County Superior Court
Comment on Behalf of Org.: No
Address: 191 N. First Street Dept. 15
City, State, Zip: San Jose CA, 95113
Telephone: [REDACTED]
Email: [REDACTED]

COMMENT:

The UD form looks fine to me. I was hoping that there would be a mandated form to use in small claims cases for unpaid rent filed before 3/1/21. Many landlords continue to seek unpaid rent for applicable months (3/1/20) in small claims court. AB3088 seems to prohibit the mere filing of such claims until 3/1/21 and a form applicable to small claims would be nice.

From: [Ronan, Anne](#)
To: [Corbo, Richard](#)
Cc: [Invitations](#)
Subject: RE: SP20-06 Invitation to Comment UD forms
Date: Wednesday, September 16, 2020 1:27:15 PM

Thank you for the comments on the proposal.

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Corbo, Richard <rcorbo@sbcourts.org>
Sent: Wednesday, September 16, 2020 1:22 PM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Subject: SP20-06 Invitation to Comment UD forms

I think that mixing Cover Sheet with Supplemental Allegations will get very confusing for all.

Better route is to have a simple cover sheet, similar to what we are using in our local forms at the moment in Santa Barbara County SC-2072.

Then, amend the Unlawful Detainer Complaint (UD-100) and Unlawful Detainer Answer (UD-105) forms to include all those new supplement allegations but in more of an easier reading flow chart form. That will allow better access for justice for self-represented litigants. It will also make it more efficient for attorneys and the court. With a flow chart you will have better efficiency, consistency and certainty in rulings throughout the state.

Richard



Richard Corbo, Jr., Esq.
Shriver Settlement Master
Santa Barbara Superior Court
312 E. Cook Street
Building E, Room 234
Santa Maria, CA 93454
805-614-6621
rcorbo@sbcourts.org

From: [LOUIE CORONADO](#)
To: [Invitations](#)
Subject: Proposed Form UD-101
Date: Thursday, September 17, 2020 11:48:24 AM

My comments will focus on proposed Form UD-101. I too believe the form needs modifications to comply with CCP 1179.01 et seq (CTRA). I too am an attorney who regularly practices in the area of unlawful detainer law.

I too believe the judicial council is far exceeding the intent of the legislature with proposed UD-101. The legislature enacted a simple proposed supplemental cover sheet that was not required to be signed under penalty of perjury. The Judicial Council is proposing what is essentially a mandatory complaint for unlawful detainer cases. As a mandatory form, it must be used in all unlawful detainer cases and must therefore be inclusive of all possible permutations of unlawful detainer causes of action. For example, UD-101 does not take into account the scenario where a residential property is rented to an entity and therefore exempt from the requirements of CTRA (See CCP 1179.02(h)). UD-101 also does not take into account the arguable inapplicability of the CTRA to termination of tenancies-at-will (tenancies of an indefinite period without payment of rent) which may be exempt as the tenant is not "hiring" the real property (Civil Code Section 789; Covina Manor v. Hatch (1955) 133 CA2d Supp 790, 792-793).

I too believe the form also inaccurately states the law. For example paragraph 5 of UD-101 (and the background document provided with the invitation to comment) state that if the case is based on rent due before March 1, 2020, then no further information need be required under CCP 1179.03.5(a)(1). This is incorrect. CCP 1179.03.5(a)(1) provides that "The tenant was GUILTY (emphasis added) of the unlawful detainer before March 1, 2020." For a tenant to be guilty of unlawful detainer a proper termination notice must have been served and expired by February 29, 2020. If I were to serve a 3-day to pay or quit now demanding February 2020 rent, the applicable provision allowing the case to move forward would be CCP 179.03.5(a)(3)(A)(i) [that is an at-fault just cause]. To illustrate the issue with the form's argument let's consider that a landlord could now in September serve a 3-day to pay or quit demanding February 2020 rent and obtain a judgment including COVID-19 rental debt holdover damages through the date of entry of judgment, even if the tenant has properly submitted declarations of hardship. On the same issue, UD-101 is not inclusive of a case where, for example, a landlord properly served a 30-day notice to quit that expired February 20, 2020. That would be a proper exemption under CCP 1179.03.5(a)(1) because the tenant is GUILTY of the UD before March 1, 2020 but there is no place to so indicate on the UD-101.

I too also fail to understand the "Filed with (title of document, if any):" language on the top of the form. I am not sure why that is important and it is confusing. For example, I would expect that this form would frequently be filed at the same time as default packets in cases filed before October 5, 2020 which frequently include request for entry of default, proofs of service of summons, and judgment forms. Which document name should be entered on that line as the UD-101 being filed with? And why is it important especially given that it can be filed alone and not with any other

document in cases filed before October 5, 2020?

Also, I too believe language in paragraph 6a of UD-101 is exclusionary. It appears to require a form titled "Notice from the State of California" but many landlords using forms from the California Apartment Association will use Form CA-400 titled "Informational Notice of COVID-19 Tenant Relief Act of 2020" which contains the required language but the differences in titles may confuse the clerks. Perhaps the language in the form should be more generic and simply request a notice with complies with the requirements of CCP 1179.04. Also, each of the 15-day notices for protected and transition period require specific "Notice from the State of California" language and the use of the title is confusing in the form.

Paragraphs 6(c) and 8(a) of UD-101 refer to 15-day notice to pay, quit, or deliver a declaration. I think the language should be changed to reflect "was served with at least 15-days' notice to pay, quit...". Many practitioners are using notices which allow 15 days to pay or deliver a declaration, but 30 calendar days to vacate to ensure compliance with federal CARES Act moratorium. The existing form language is not inclusive of that type of notice and seems to imply that only a 15-day notice can be used when the language in the cited code section only requires "at least" 15 days' notice.

I believe the references in form UD-101 to UD-100 are exclusionary of attorney-prepared complaints. I think a qualifier such as "if used" would be appropriate.

I understand the Judicial Council's motives are good, but to enact such a restrictive and arguably inaccurate mandatory form is inappropriate and will only serve to confuse clerks and the judiciary as to the requirements of the CTRA. As noted in the background document, the committee's first thought to not produce such a form including allegations was likely the best. The parties should be permitted to fully litigate the requirements of the CTRA without being handicapped by the Judicial Council.

I propose that instead of this mandatory form, that parties be allowed to use an optional declaration form for entry of clerk's or court's judgment similar to the UD-116. This would allow most cases to proceed with the judicial council form and also allow litigants to argue the law in more esoteric scenarios described above. (Perhaps with a comment that the form was rushed and may not apply to all situations.)

Also it is not clear to me if the proposed UD-101 is required to be served to the defendant, and how it would be required to be served. For example, would it be served with summons and complaint in new cases filed on or after October 5 and simply mailed in cases filed before October 5? Would there be a difference in complex cases where civil case cover sheet has to be served? I expect this would be an area of confusion with clerks and some direction would be helpful so practice is consistent across counties. Thank you.

Very truly yours

Louie Coronado

Attorney at Law,

A Professional Corporation

2525 Alluvial Ave.,#320

Clovis, CA 93611

559-472-3629 Office

559-696-1353 Cell

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From: [Ronan, Anne](#)
To: [Invitations; Salangsang, Khayla](#)
Subject: FW: CLA SoCal Comments re AB 3088 Judicial Council
Date: Thursday, September 17, 2020 12:26:26 PM
Attachments: [20-09-17 CLA SoCal Comments re AB 3088 Judicial Council.pdf](#)

Another one I that came to me directly

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Kate Marr <kmarr@CLSOCAL.ORG>
Sent: Thursday, September 17, 2020 12:01 PM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Cc: Amy Goldman <agoldman@clsocal.org>
Subject: CLA SoCal Comments re AB 3088 Judicial Council

Dear Anne,

Attached are comments from CLA SoCal on AB 3088 Judicial Council. Thank you for your consideration.

Kate

Kate Marr | Executive Director

Community Legal Aid SoCal

2101 North Tustin Avenue, Santa Ana, CA 92705

Main Office: [\(800\) 834-5001](tel:8008345001)

(tel.) [\(714\) 571-5218](tel:7145715218) | (fax) (714) 571-5270

kmarr@clsocal.org



Please note: I have a new email address to reflect our new name. Please update my information in your address book and direct your messages to my new email address: kmarr@clsocal.org.



September 17, 2020

Sent Via Email

Anne M. Ronan

Judicial Council of California

Anne.ronan@jud.ca.gov

Dear Judicial Council Members,

Thank you for acting quickly to implement the complex new laws protecting tenants from eviction during the COVID pandemic. While the proposed forms contain much of the needed information to implement the new protections under federal and state law, this comment letter identifies significant issues and due process concerns. In addition, to fully implement the new laws, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101.

1. Practical Concerns for Unrepresented Tenants

The Judicial Council should not require tenants to use the mandatory Declaration of Covid-19 Distress form, UD-104. Low income-tenants and people of color will be disproportionately hurt by this requirement because there is no way to adequately educate the public of the form requirement. There is no valid reason for making this form mandatory, and our office is unaware of any other judicial council tenant form that is mandatory in unlawful detainer actions.

Even if courts publish the UD-104 form on their websites, low-income tenants often lack reliable internet access and non-English speakers will face particular challenges with finding the forms. If a tenant is lucky enough to have internet access, documents are often difficult to find on a court's website and are buried under multiple subheadings and links. For example, an attorney in my office just went to the Orange County Superior Court website and searched for "unlawful detainer answer." The first five search results were advertisements for businesses seeking to charge tenants for their services which is extremely discouraging for tenants seeking legal assistance.¹ The answer form is only available after clicking the first non-advertisement search result which is six results down, clicking two additional links, and expanding a collapsible subheading which is one of seven subheadings. Based on this labyrinthian search, even the savviest tenant will have difficulty finding the UD-104 form.

¹ These search results should not be on the court's website to begin with because they seek payment for publicly available documents and deter tenants from seeking help from trusted non-profit legal service providers.



Low-income tenants will also have difficulty in learning about the mandatory UD-104 form because many outlying courts are closed to the public and even our Central Justice Center in Orange County is only allowing the public to enter the courthouse with appointments. These problems were exemplified when we recently met with a tenant who had an unlawful detainer trial scheduled but needed to wait more than a week for an appointment to obtain vital court documents. If tenants do not have easy access to a nearby courthouse and have to wait more than a week for an in-person appointment, requiring the mandatory UD-104 form will have disastrous results on tenants. For all these reasons, the UD-104 form should not be mandatory.

2. Incorporation of CDC Order

While the invitation to comment and forms include brief reference to the CDC order, the description of the CDC Order's scope is inaccurate. The CDC order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship; the only evictions permitted are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.² So the CDC order prohibits all no-fault evictions in addition to nonpayment evictions.³ It is also important to note that the CDC order protects tenants who face eviction based on rental debt from before March 1, 2020. Specific suggestions about how to incorporate the CDC order into the forms are below.

3. Due process concerns

AB 3088 provides that where the landlord alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in CCP § 1167. However, neither the statute nor the court forms explain how the declaration of financial distress filing interacts with the normal deadline for a responsive pleading. Tenants may submit the UD-104 explaining why they

² The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

³ Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.



should not be subject to eviction due to COVID related hardship, but if their declaration is rejected for either a technical issue or because the judge finds that the tenant did not meet the CCP §473 standard, it is unclear what happens next. It does not make sense for tenants to file an answer with their declaration, because the entire purpose of the declaration is to assert that the unlawful detainer may not proceed. Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. Without this safeguard, tenants that are clearly intended to be protected under AB 3088 could be defaulted before their 1179.03(h) hearing.

The addition of form UD-101 and its check-box supplemental allegations necessitates amendments to the form Answer. Proposed form UD-101 allows plaintiffs to easily allege compliance with the new laws by checking boxes. However, tenants do not get an opportunity to contest these allegations with parallel checkboxes because no changes are proposed to the Answer form. Due to Emergency Rule 1, the vast majority of cases filed will demand large amounts of money and a general denial will not be permitted. Tenants proceeding in pro se need an opportunity to contest these supplemental allegations easily. While some tenants will learn of their legal rights and file a UD-104, many will not be able to access legal assistance and will not know to file anything other than an Answer. Tenants in those situations should have ready opportunity to contest the landlord's form allegations as set out in UD-101. This requires amendment of the Answer form.

4. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

The supplemental cover sheet #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration.

In addition, several items require clarification:



- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

5. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language in #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration 2) the tenant did give the landlord the AB 3088 declaration of financial distress



and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC order.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment.

Regards,

Kate Marr
Community Legal Aid SoCal
Executive Director

From: [Jason Tarricone](#)
To: [Ronan, Anne](#); [Invitations](#)
Subject: Comments on SP20-06 - Proposed Forms for AB 3088
Date: Thursday, September 17, 2020 11:59:52 AM
Attachments: [Comment letter - CLSEPA.pdf](#)

Please find our comment letter attached. Thank you!

JASON TARRICONE, ESQ. | DIRECTING ATTORNEY, HOUSING PROGRAM

pronouns: he / him / his

Community Legal Services in East Palo Alto

www.clsepa.org

Phone: (650) 391-0362 | Fax: (866) 688-5204

1861 Bay Road | East Palo Alto, CA 94303

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**COMMUNITY
LEGAL SERVICES**
IN EAST PALO ALTO

September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Community Legal Services in East Palo Alto (CLSEPA) is a legal aid organization representing hundreds of families each year in unlawful detainer lawsuits and other housing matters to prevent homelessness and displacement. We write to provide feedback on the proposed forms to implement Assembly Bill 3088.

We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions and training for court staff.

1. Incorporation of the Centers for Disease Control and Prevention's Order

As the Judicial Council is aware, the CDC's Order, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. Our organization has been working with grassroots organizations, schools, and other service providers to understand this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone. It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease

violations.¹ So the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.² The CDC Order also protects tenants from eviction for rental debt from before March 1, 2020, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;³ if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-

¹ [1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

³ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. **In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104.** Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. **Tenants proceeding in pro se require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.**

4. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC

declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

5. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, court clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed *in pro per*. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several

check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

6. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum we request that the Judicial Council made the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

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Thank you for your work in implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me at jason@clsepa.org.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line that ends in a small wave.

Jason Tarricone
Directing Attorney, Housing Program
Community Legal Services in East Palo Alto

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:06:50 AM

Proposal: SP20-06
Position: Disagree
Name: Honorable Michael Dest
Title: Superior Court Judge
Organization: San Bernardino Superior Court
Comment on Behalf of Org.: No
Address: 247 W. 2nd Street
City, State, Zip: San Bernardino CA, 92417
Telephone:
Email:

COMMENT:

Page 3 of 4

Paragraph 10. b. (2)

The citation to CC 1946.2(8)(e) does not exist

There is a section 1946.2(e)(8) but it does not say what paragraph 10 b. (2) cites.

Where is there the language that “the owner of the property has entered into a contract with a buyer who intends to occupy the property..”?

I find that the Paragraph 10b subparts [(1) and (2)] (the no-fault just causes) misleading. It suggests that there are only two “no-fault” just causes. Paragraph 10 b. is sufficient by itself, however if examples are given, the code provides 4 reasons, of which the two most used are conspicuously omitted:

(A)(i) intent to occupy the residential real property by the owner, or their spouse, domestic partner, children, grandchildren, grandchildren, parents, or grandparents.

(B) Withdrawal of the residential real property from the rental market.

Overall, Form UD 101 is most difficult to follow and a minefield to get correct. It should have a user guide attached explaining how to fill it out.

From: [Ronan, Anne](#)
To: [Invitations](#); [Salangsang, Khayla](#)
Subject: FW: DRC Comment Letter on SP20-06
Date: Thursday, September 17, 2020 11:47:18 AM
Attachments: [image001.png](#)
[DRC Comments on New Forms to Implement Assembly Bill 3088.pdf](#)

Not sure if you got this one

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Heidi Joya <Heidi.Joya@disabilityrightsca.org>
Sent: Thursday, September 17, 2020 11:39 AM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Subject: DRC Comment Letter on SP20-06

Good Morning:

Please see attached for DRC's comment letter on New Forms to Implement Assembly Bill 3088. Thank you for your consideration.

Heidi Joya

Attorney

Disability Rights California, Legal Advocacy Unit

350 South Bixel Street, Suite 290, Los Angeles, CA 90017

Tel: (213) 213-8000 or D: (213) 213-8150 | Fax: (213) 213-8001

TTY: [\(800\) 719-5798](tel:(800)719-5798)

Email: heidi.joya@disabilityrightsca.org

Intake Line: [800-776-5746](tel:800-776-5746)



Website: www.disabilityrightsca.org | www.disabilityrightsca.org/espanol

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www.disabilityrightsca.org

September 17, 2020

Sent via email to anne.ronan@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

RE: Invitation to Comment – Unlawful Detainer: New Forms to Implement Assembly Bill 3088- SP20-06.

Dear Members of the Judicial Council:

Disability Rights California (DRC), the protection and advocacy system for the State of California, submits this letter in response to the Judicial Council's invitation to comment on the adoption of new forms UD-101, UD-104, and UD-104(A) to implement Assembly Bill 3088.

Disability Rights California, the largest disability rights group in the country, represents Californians with disabilities in matters that further their rights and access to justice. In that broad spectrum of work, DRC represents tenants in securing safe and affordable housing. Our housing advocacy includes promoting affordable, accessible, and equitable housing development, protecting tenants' rights, and preventing homelessness and displacement of marginalized communities. This includes defending tenants with disabilities in unlawful detainer actions, which is especially necessary now that thousands of people with disabilities face eviction and are at risk of imminent homelessness.

A. Plaintiff's Mandatory Cover Sheet and Supplemental Allegations (UD-101)

Disability Rights California offers the comments below regarding the Judicial Council's proposed UD-101 forms.

1. Form UD-101 Should Include Additional Information Regarding the CDC Order.

Currently, the invitation to comment includes a brief reference to the CDC Order, but the Judicial Council's description of the Order's scope is limited only to evictions for failure to pay rent. However, the CDC Order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship. The only evictions permitted are those based on specified tenant conduct such as, health and safety violations, destruction of property, criminal activity, or other lease violations.¹ This means that the CDC Order prohibits all no-fault evictions in addition to nonpayment evictions. It is also important to note that the CDC Order protects tenants who face eviction based on rental debt from before March 1, 2020.

Proposed Form UD-101 includes check boxes for the landlord to state whether the tenant provided a CDC declaration, but there are no subsequent instructions for the court on how to proceed. Given that the CDC Order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

¹ The CDC Order specifically allows eviction only when "based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)." See *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55292-01, 55294 (September 4, 2020).

Form UD-101 should specify that an unlawful detainer based on, 1) nonpayment of rent for any time period or 2) any no-fault grounds, may not proceed against a tenant that has submitted a CDC declaration. This should also be reflected in Subpart 10(b), which discusses no-fault just cause evictions. The Form should also warn landlords who are attempting to proceed with evictions despite receipt of a CDC declaration of their potential liability for civil and criminal penalties.

B. Cover Sheet for Declaration of COVID-19 Related Financial Distress (UD-104)

DRC also provides suggestions regarding the Judicial Council's proposed Form UD-104.

1. Form UD-104 Should Be Optional

On Page 7 of its Invitation to Comment, the Judicial Council states that the advisory committee recommends the mandatory use of Form UD-104 with the declaration of financial distress. Making this form mandatory will create a barrier for tenants who are trying to submit the declaration within the short timeline provided by CCP §1167. Consistent with AB 3088, tenants who do not have access to the cover sheet, but that submit the declaration of financial distress, must not be turned away.

2. Service of the declaration of financial distress is not required.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. In addition to falling outside the scope of AB 3088's language, requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a

pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

3. The Court should preserve tenants' rights to file responsive pleadings after they file a declaration of financial distress.

Currently, UD-104 provides tenants with information on what happens after they file the declaration, but the form does not provide information or a process for what happens if their declaration is rejected due to a technical issue or because the judge finds that the tenant did not meet the requirements of CCP § 473.

First, in order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. Without this safeguard, tenants that are clearly intended to be protected under AB 3088 could be defaulted before their 1179.03(h) hearing.

Second, Form UD-104 should briefly explain that if the Court finds against the tenant at the good cause hearing, the tenant should act quickly and file a responsive pleading to prevent a default and default judgment against them.

4. Form UD-104 should include information regarding reasonable accommodations.

Form UD-104 should alert tenants with disabilities that they have a legal right to reasonable accommodations in courts pursuant to Title II of the Americans with Disabilities Act. Many tenants with disabilities face additional barriers to timely assertion of their rights, especially during this global pandemic. People with disabilities are at a higher risk of contracting COVID-19 and are following CDC guidelines by social distancing and

staying at home to prevent exposure. This means that they may need reasonable accommodations regarding attendance of any court hearings, including the hearing to determine if there was good cause for a tenant not returning the declaration to the plaintiff within the time required by CCP § 1179.03(h).

People with disabilities may also need assistance with knowing and understanding all of the forms that need to be filed to assert their rights. It is difficult enough for an in pro se tenant to understand what to file, but it can be especially difficult for tenants with certain disabilities. In one particular case, a tenant with a Section 8 voucher lost her housing because she did not understand any of the documents she received from the court regarding eviction proceedings and did not file an answer. However, the reason she did not understand was because her learning disability affected her ability to read and process the information, and she did not know what steps to take next. By the time she obtained legal counsel, the court had entered default judgment against her. An accessible reasonable accommodation process is crucial to preventing these types of barriers to justice.

5. Form UD-104 should be made accessible.

In addition, we suggest making these forms accessible by providing them in Braille or large print free of charge. The Judicial Council could also use a single, sans serif font (Arial) throughout (from 14 pt. to 18 pt.), as it has suggested in the past with other reasonable accommodation forms.

C. Additional Comments

The addition of form UD-101 and its check-box supplemental allegations necessitates amendments to the form Answer. Proposed form UD-101 allows plaintiffs to easily allege compliance with the new laws by checking boxes. However, tenants do not get an opportunity to contest these allegations with parallel checkboxes because no changes are proposed to the Answer form. Due to pandemic, the vast majority of cases filed will demand large amounts of money and a general denial will not be permitted. Tenants proceeding in pro se need an opportunity to contest these supplemental allegations easily. While some tenants will learn of their

Invitation to Comment
September 17, 2020
Page 6 of 6

legal rights and file a UD-104, many will not be able to access legal assistance and will not know to file anything other than an Answer. Tenants in those situations should have ready opportunity to contest the landlord's form allegations as set out in UD-101. This requires amendment of the Answer form. Most plaintiffs in unlawful detainers are represented by legal counsel; most defendants are not. Creating an easy to use complaint form while neglecting to create a parallel answer form places those plaintiffs at an even greater advantage in unlawful detainer lawsuits than they already have.

While we appreciate the Judicial Council's sense of urgency in ensuring that courts can comply with AB 3088, we urge it to take the time needed to ensure that updated forms are accessible, thorough, and equitable.

Thank you for your time and consideration of our comments. Please direct any questions regarding these comments to Heidi Joya Heidi.Joya@disabilityrightsca.org.

Sincerely,

/s/

Heidi Joya
Staff Attorney

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:20:20 AM

Proposal: SP20-06
Position: Disagree
Name: PATRICK DUNLEVY
Title:
Organization:
Comment on Behalf of Org.: No
Address: 2239 Wanderer Dr.
City, State, Zip: San Pedro California, 90732
Telephone: 3104271144
Email: pmarkd@aim.com
COMMENT:

I urge the Judicial Council not to adopt Form UD-104 because I think it greatly and unfairly increases the odds that the defendant in an unlawful detainer action will lose on a technicality. Many UD defendants may very well be unable to pay their rent for one of the reasons listed in Attachment UD-104(A) but will never be able to make that fact known to the court because filing Form UD-104 will be a tremendous obstacle.

The requirement to file Form UD-104 does not comport with the real world in which so many tenants, particularly low-income tenants, live. The reality of the situation is that only a small fraction of tenants who are served unlawful detainer complaints are able to find legal representation. Tenants who represent themselves must navigate what can be an intimidating and confusing legal system on their own. They do not know civil procedure and do not know how to complete legal forms correctly. In short, I think, Form UD-104 is setting them up to fail. Those who are not proficient in English and have a limited education are even more likely to fail to complete and file Form UD-104 on time and correctly.

To adopt Form UD-104 would be to negate the idea of equal justice under the law.

From: [Linda Yu](#)
To: [Ronan, Anne](#); [Invitations](#)
Cc: [Housing](#)
Subject: Public Comment Submission - SP20-06 - Proposed Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 11:13:31 AM
Attachments: [image001.png](#)
[image004.png](#)
[image005.png](#)

September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:
East Bay Community Law Center's Housing Practice writes in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training.

1. Incorporation of the Centers for Disease Control and Prevention's Order

As the Judicial Council is aware, the CDC's Order, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. Western Center has been working with legal services and other partners across California to educate advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to

meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal

activity, or other lease violations.^[1] So the CDC Order is broader in scope than AB 3088 in

that it prohibits all no-fault evictions in addition to nonpayment evictions.^[2] The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;^[3] if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a

commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties

for violation of these protections.

4. **Defendant's cover sheet (UD-104)**

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here."

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to

reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum we request that the Judicial Council made the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

Thank you for your work in implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me at Lyu@ebclc.org.

Sincerely,

Linda Yu
Housing Practice Interim Director
East Bay Community Law Center

Linda Yu | Housing Practice Interim Director

Pronouns: She/Her/Hers

[East Bay Community Law Center](#) | A Clinic of Berkeley Law School

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[\[1\]](#)

[1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

[\[2\]](#)

Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

[\[3\]](#) Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

From: [Rosanna Kendrick](#)
To: [Ronan, Anne](#); [Invitations](#)
Cc: ["Carolyn Reilly"](#)
Subject: SP20-06 - Proposed Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 12:13:54 PM

September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:
Elder Law & Advocacy writes in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training.

1. Incorporation of the Centers for Disease Control and Prevention's Order

As the Judicial Council is aware, the CDC's Order, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. Western Center has been working with legal services and other partners across California to educate advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal

activity, or other lease violations.^[1] So the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.^[2] The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to

COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;^[3] if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship

tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

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UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

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To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also

recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

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The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

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Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings,

and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum we request that the Judicial Council made the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

Thank you for your work in implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me.

Sincerely,

Rosanna L. Kendrick

Staff Attorney – ELDER TENANT ASSISTANCE PROJECT

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Our Mission: Seniors are a growing and vital segment of our community. Elder Law & Advocacy seeks to protect seniors by providing legal advice and advocacy. We serve seniors by helping them to defend their legal rights and preserve their respected place in the community.

^[1] [1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Fed.Reg. at 55294.

^[2] Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

^[3] Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

From: [Cary Gold](#)
To: anne.ronen@jud.ca.gov; [Invitations](#)
Cc: [Martina Cucullu](#)
Subject: SP 20-06 Invitation to Comment re Judicial Council Forms
Date: Thursday, September 17, 2020 11:47:38 AM

Dear Chief Justice Cantil-Sakauye and members of the Judicial Council:

We have seen a flurry of new landlord-tenant laws, both federal and state, in the past weeks and I applaud the efforts of the Judicial Council to issue forms to address these new laws. While I understand the tight comment period, please note that due to limited time, these comments may not cover all the issues I see with the forms.

1. Specific Instructions for Clerks

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;[1] if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

2. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

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The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

Thank you for considering these changes.

Carolyn Gold

Director of Litigation and Policy

Eviction Defense Collaborative

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Carolyn Gold, Director of Litigation and Policy
Eviction Defense Collaborative (EDC)
[1338 Mission Street, 4th Floor](#)
[San Francisco, CA 94103](#)

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Email: caryg@evictiondefense.org
Website: <http://evictiondefense.org/>

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Thank you for your anticipated cooperation.

Attachments area

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Wednesday, September 16, 2020 9:23:53 AM

Proposal: SP20-06
Position: Agree if modified
Name: Candice Garcia-Rodrigo
Title:
Organization:
Comment on Behalf of Org.: No
Address:
City, State, Zip: Riverside CA,
Telephone:
Email:
COMMENT:
Proposed Form UD-104:

1. Attach a proof of service as page 2 to assist litigants, particularly self-represented litigants, in understanding the necessary service required and to ensure it is a complete form (service required per instructions box).
2. Paragraph 2 is not clear. I think it may be helpful to add a check box with "as follows" before the check box indicating response on Form MC-025 to help litigants understand they may state their reasons in the space provided, or in an attached form. This may require ending the statement in paragraph 2 with "is:" rather than a period.

From: [Carolyn Walker](#)
To: [Ronan, Anne](#); [Invitations](#)
Subject: Comment for SP20-06
Date: Thursday, September 17, 2020 11:23:19 AM
Attachments: [FVAP Draft Comment Letter AB 3088 Forms Final.pdf](#)

Please consider the attached comment from Family Violence Appellate Project regarding SP20-06.

Thank you,
Carolyn Walker

--

Carolyn Walker, Esq.
Housing Outreach Attorney

FAMILY VIOLENCE APPELLATE PROJECT

449 15th Street, Suite 104

Oakland, CA 94612

Tel: [\(510\) 858-7358](tel:(510)858-7358) | Fax: [\(866\) 920-3889](tel:(866)920-3889)

www.fvaplaw.org





September 16, 2020

Submitted via e-mail

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
invitations@jud.ca.gov

Re: Invitation to Comment on Proposal SP20-06, Adoption of New Mandatory Forms UD-101 and UD-104; Approve Form UD-104(A) (SUPPORT with Recommendations)

Dear Members of the Judicial Council:

The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's (Council) Invitation to Comment number SP20-06, adoption of new mandatory forms UD-101 and UD-104 and approve form UD-104(A). Thank you for acting quickly to implement the complex new laws protecting tenants from eviction during the COVID pandemic. **While the proposed forms contain much of the needed information to implement the new protections under federal and state law, this comment letter identifies significant issues and due process concerns. In addition, in order to fully implement the new laws, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. Finally, to ensure that domestic violence protections against eviction are not overlooked, we recommend an addition to the forms as explained below.**

FVAP is the only nonprofit organization in California dedicated to representing domestic violence survivors in civil appeals for free. FVAP represents low-income survivors who need to appeal dangerous trial court decisions that leave them or their children at risk of ongoing abuse. FVAP's goal is to empower abuse survivors through the court system and ensure that they and their children can live in safe and healthy environments, free from abuse. Because of FVAP's connection to the domestic violence community, it is uniquely positioned to assess the impact of the Judicial Council's proposed form changes on survivors, including its accessibility to survivors and usefulness to unrepresented survivors, specifically in housing issues and eviction defense.

Housing is critical to an individual's wellbeing. FVAP provides legal advice and resources to attorney and non-attorney advocates throughout California that are assisting domestic violence survivors with housing issues and appellate representation to survivors of domestic

violence who were evicted or lost their housing assistance because of domestic violence. The domestic violence attorneys and non-attorney advocates that FVAP supports often express the fears, frustrations and concerns that their clients face while trying to find housing. Domestic violence survivors are often forced to move because of their abuser's behavior. Whether a survivor is searching for new housing because they fled an abusive home, or because they were evicted because of an abuser's actions, survivors struggle to find and secure safe housing. The lack of affordable housing, coupled with discrimination against survivors of domestic violence, cause housing to be one of the largest barriers to the safety of domestic violence survivors and their families.

Domestic violence is a primary cause of homelessness for women and children in the United States.¹ Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, while over 50% of homeless women report that domestic violence was the immediate cause of their homelessness.² Survivors being evicted as a result of their abuser's behavior is unfortunately rather common across the state. Evictions due to domestic violence can be varied, and can result from the actual incidents of violence within the family home to the regular calling of emergency services to the home, to an inability to pay rent due to reduced income if the abuser is incarcerated or restrained from the family home.

Homelessness can also be a precursor to additional violence because a survivor is at the greatest risk of violence when separating from an abusive partner.³ Domestic violence survivors make up a significant portion of the homeless population. Additionally, housing services are overwhelmingly the most common unmet need of survivors in California. In 2018, a study from 96 domestic violence agencies showed that 83% of the unmet requests to the agencies by survivors were for housing.⁴ **To further prevent homelessness among survivors and all Californians, and to fully effectuate the current protections available to them, we recommend the following:**

1. Incorporation of CDC Order

While the invitation to comment and forms include brief reference to the CDC order, the description of the CDC Order's scope is inaccurate. The CDC order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship; the only evictions permitted are those based on specified tenant conduct: health and safety

¹ See ACLU Women's Rights Project, *Domestic Violence and Homelessness* (2006), <http://www.aclu.org/pdfs/dvhomelessness032106.pdf>; see also U.S. Conference of Mayors, *A Status Report on Hunger and Homelessness in America's Cities: A 25-City Survey* (Dec. 2014), <https://www2.cortland.edu/dotAsset/655b9350-995e-4aae-acd3-298325093c34.pdf>.

² Monica McLaughlin & Debbie Fox, National Network to End Domestic Violence, *Housing Needs of Victims of Domestic Violence, Sexual Assault, Dating Violence, and Stalking* (2019), https://nlihc.org/sites/default/files/AG-2019/06-02_Housing-Needs-Domestic-Violence.pdf.

³ See *id.* at 431.

⁴ National Network to End Domestic Violence (2018) Domestic Violence Counts California Survey <<https://nnedv.org/mdocs-posts/2018-california/>> (as of August 22, 2019).

violations, destruction of property, criminal activity, or other lease violations.⁵ So the CDC order prohibits all no-fault evictions in addition to nonpayment evictions.⁶ It is also important to note that the CDC order protects tenants who face eviction based on rental debt from before March 1, 2020. Specific suggestions about how to incorporate the CDC order into the forms are below.

2. Due process concerns

AB 3088 provides that where the landlord alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in CCP § 1167. However, neither the statute nor the court forms explain how the declaration of financial distress filing interacts with the normal deadline for a responsive pleading. Tenants may submit the UD-104 explaining why they should not be subject to eviction due to COVID related hardship, but if their declaration is rejected for either a technical issue or because the judge finds that the tenant did not meet the CCP §473 standard, it is unclear what happens next. It does not make sense for tenants to file an answer with their declaration, because the entire purpose of the declaration is to assert that the unlawful detainer may not proceed. Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that once filed, the clerk should set a hearing pursuant to CCP §1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. Without this safeguard, tenants that are clearly intended to be protected under AB 3088 could be defaulted before their 1179.03(h) hearing.

The addition of form UD-101 and its check-box supplemental allegations necessitates amendments to the form Answer. Proposed form UD-101 allows plaintiffs to easily allege compliance with the new laws by checking boxes. However, tenants do not get an opportunity to contest these allegations with parallel checkboxes because no changes are proposed to the Answer form. Due to Emergency Rule 1, the vast majority of cases filed will demand large amounts of money and a general denial will not be permitted. Tenants proceeding in pro se

⁵ The CDC Order specifically allows eviction only when "based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)." 85 Feg.Reg. at 55294.

⁶ Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

need an opportunity to contest these supplemental allegations easily. While some tenants will learn of their legal rights and file a UD-104, many will not be able to access legal assistance and will not know to file anything other than an Answer. Tenants in those situations should have ready opportunity to contest the landlord's form allegations as set out in UD-101. This requires amendment of the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

The supplemental cover sheet #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration.

In addition, several items require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at-fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process. This will be even more burdensome for survivors of domestic violence who are either experiencing abuse by their abusers currently, suffering from past trauma, or are attempting to maintain safe, affordable housing away from their abuser.

The language in #2 is confusing. It says “Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice...” Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration 2) the tenant did give the landlord the AB 3088 declaration of financial distress and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC order.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration. This again is overly burdensome on survivors who already are experiencing trauma, and creates additional obstacles for them to remain in safe housing.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC

Letter to Council re: Invitation to Comment SP20-06
September 16, 2020

declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment.⁷

Moreover, because survivors of domestic violence face additional barriers to safe housing, and timely assertion of their rights during the pandemic, please add an additional advisement that people experiencing domestic violence are entitled to additional protections under federal law and may assert those protections as a defense to eviction as well.⁸

In conclusion, thank you for the Judicial Council's work on creating these forms to reflect the new requirements and protections found in AB 3088. The additions and clarifications noted above and, specifically, regarding domestic violence survivors, will mitigate additional barriers for survivors and their families to remain in safe housing or being unlawfully evicted during the pandemic. Lastly, thank you for the Council's consideration of these comments.

Sincerely,
FAMILY VIOLENCE APPELLATE PROJECT

Carolyn Walker
Rural Housing Outreach Attorney

⁷ 42 U.S.C. §§ 12101 et seq., California Code of Civil Procedure Section 1161.3, The Right to a Safe Home Act was California Assembly Bill 2413 (2017-2018), now California Civil Code Section 1946.8.

⁸ 34 U.S.C. § 12491.

From: [Steve Hrdlicka](#)
To: [Invitations](#)
Subject: Poposal: SP20-06 = DO NOT AGREE with proposed changes
Date: Thursday, September 17, 2020 11:36:49 AM

Unlawful detainers have comprised the majority of my practice for more than 30 years. Clearly the legislature created a mess, but the judicial council is adding to the problem.

I can appreciate the desire to quickly provide some guidance, but the legislature proposed a simple supplemental cover [sheet](#), not an encyclopedia. I believe the proposed form misstates the law, is confusing, and exceeds what is necessary. Rather than simplify matters, the proposed form does just the opposite. I am echoing the very specific comments of another brilliant colleague, which can be found below my name and contact information.

Steven R. Hrdlicka

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Steve@srhcc.com

My comments will focus on proposed Form UD-101. I believe the form needs modifications to comply with CCP 1179.01 et seq (CTRA).

I believe the judicial council is far exceeding the intent of the legislature with proposed UD-101. The legislature enacted a simple proposed supplemental cover sheet that was not required to be signed under penalty of perjury. The Judicial Council is proposing what is essentially a mandatory complaint for unlawful detainer cases. As a mandatory form, it must be used in all unlawful detainer cases and must therefore be inclusive of all possible permutations of unlawful detainer causes of action. For example, UD-101 does not take into account the scenario where a residential property is rented to an entity and therefore exempt from the requirements of CTRA (See CCP 1179.02(h)). UD-101 also does not take into account the arguable inapplicability of the CTRA to termination of tenancies-at-will (tenancies of an indefinite period without payment of rent) which may be exempt as the tenant is not “hiring” the real property (Civil Code Section 789; Covina Manor v. Hatch (1955) 133 CA2d Supp 790, 792-793).

I believe the form also inaccurately states the law. For example paragraph 5 of UD-101 (and the background document provided with the invitation to comment) state that if the case is based on rent due before March 1, 2020, then no further information need be required under CCP 1179.03.5(a)(1). This is incorrect. CCP 1179.03.5(a)(1) provides that “The tenant was **GUILTY** (emphasis added) of the unlawful detainer before March 1, 2020.” For a tenant to be guilty of unlawful detainer a proper termination notice must have been served and expired by February 29, 2020. If I were to serve a 3-day to pay or quit now demanding February 2020 rent, the applicable provision allowing the case to move forward would be CCP 179.03.5(a)

(3)(A)(i) [that is an at-fault just cause]. To illustrate the issue with the form's argument let's consider that a landlord could now in September serve a 3-day to pay or quit demanding February 2020 rent and obtain a judgment including COVID-19 rental debt holdover damages through the date of entry of judgment, even if the tenant has properly submitted declarations of hardship. On the same issue, UD-101 is not inclusive of a case where, for example, a landlord properly served a 30-day notice to quit that expired February 20, 2020. That would be a proper exemption under CCP 1179.03.5(a)(1) because the tenant is GUILTY of the UD before March 1, 2020 but there is no place to so indicate on the UD-101.

I also fail to understand the "Filed with (title of document, if any):" language on the top of the form. I am not sure why that is important and it is confusing. For example, I would expect that this form would frequently be filed at the same time as default packets in cases filed before October 5, 2020 which frequently include request for entry of default, proofs of service of summons, and judgment forms. Which document name should be entered on that line as the UD-101 being filed with? And why is it important especially given that it can be filed alone and not with any other document in cases filed before October 5, 2020?

Also, I believe language in paragraph 6a of UD-101 is exclusionary. It appears to require a form titled "Notice from the State of California" but many landlords using forms from the California Apartment Association will use Form CA-400 titled "Informational Notice of COVID-19 Tenant Relief Act of 2020" which contains the required language but the differences in titles may confuse the clerks. Perhaps the language in the form should be more generic and simply request a notice with complies with the requirements of CCP 1179.04. Also, each of the 15-day notices for protected and transition period require specific "Notice from the State of California" language and the use of the title is confusing in the form.

Paragraphs 6(c) and 8(a) of UD-101 refer to 15-day notice to pay, quit, or deliver a declaration. I think the language should be changed to reflect "was served with at least 15-days' notice to pay, quit...". Many practitioners are using notices which allow 15 days to pay or deliver a declaration, but 30 calendar days to vacate to ensure compliance with federal CARES Act moratorium. The existing form language is not inclusive of that type of notice and seems to imply that only a 15-day notice can be used when the language in the cited code section only requires "at least" 15 days' notice.

I believe the references in form UD-101 to UD-100 are exclusionary of attorney-prepared complaints. I think a qualifier such as "if used" would be appropriate.

I understand the Judicial Council's motives are good, but to enact such a restrictive and arguably inaccurate mandatory form is inappropriate and will only serve to confuse clerks and the judiciary as to the requirements of the CTRA. As noted in the background document, the committee's first thought to not produce such a form including allegations was likely the best. The parties should be permitted to fully litigate the requirements of the CTRA without being handicapped by the Judicial Council.

I propose that instead of this mandatory form, that parties be allowed to use an optional declaration form for entry of clerk's or court's judgment similar to the UD-116. This would allow most cases to proceed with the judicial council form and also allow litigants to argue the law in more esoteric scenarios described above. (Perhaps with a comment that the form was rushed and may not apply to all situations.)

Also it is not clear to me if the proposed UD-101 is required to be served to the defendant, and

how it would be required to be served. For example, would it be served with summons and complaint in new cases filed on or after October 5 and simply mailed in cases filed before October 5? Would there be a difference in complex cases where civil case cover sheet has to be served? I expect this would be an area of confusion with clerks and some direction would be helpful so practice is consistent across counties.

Thank you.

Steven R. Hrdlicka, Bar # 117557

|

From: [Alexander Harnden](#)
To: [Invitations](#)
Subject: Invitation to Comment SP20-06
Date: Thursday, September 17, 2020 12:03:43 PM
Attachments: [AB 3088 Judicial Council UD Form Comments ICLC 9.17.20.pdf](#)

To Whom It May Concern:

Enclosed, please find comments regarding Invitation to Comment SP20-06. We appreciate consideration of these comments, which were also submitted online.

Thank you,

Alexander Harnden (Sasha)
Public Policy Advocate
Inner City Law Center
624 South Grand Ave. #2510
Los Angeles, CA 90017
(213) 891-3258 (direct)
(213) 891-2880 (main)
www.innercitylaw.org

This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply email and delete the message and any attachments.



September 17, 2020

Judicial Council of California
c/o Anne M. Ronan
Submitted online and via email to
invitations@jud.ca.gov

Alexander Harnden
(213) 891-3258
aharnden@innercitylaw.org

RE: Unlawful Detainers: New Forms to Implement Assembly Bill 3088 (Invitation to Comment SP20-06)

To Whom It May Concern:

We submit these comments on the proposed form changes to implement the eviction protections and new procedures contained in AB 3088 and the recent CDC Order. These comments outline various concerns with the proposed changes which, if not addressed, may lead to due process issues and may preclude the full exercise of litigants' rights under these new eviction protections.

1. **Incorporation of CDC Order**

While the proposed forms make reference to the CDC order, the description of the CDC Order's scope is inaccurate. The CDC order prohibits landlords from taking any steps towards eviction of any type for tenants that have submitted a declaration of hardship, unless the eviction is based on specific conduct of the tenant which permits the eviction. Such conduct is limited to health and safety violations, destruction of property, criminal activity, or other lease violations.¹ Therefore, the proposed changes should reflect that the CDC order prohibits all no-fault evictions, in addition to nonpayment evictions.² It is also important to note that the CDC order protects tenants who face eviction based on rental debt from before March 1, 2020.

¹ The CDC Order specifically allows eviction only when "based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest)." 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this reading would undermine the entire purpose of the statute – to provide new protections against nonpayment evictions. This footnote is confusing and inappropriate, and should be removed.

2. Due process concerns

Under AB 3088, a tenant may file the declaration of financial distress in court within the time specified in CCP § 1167, and the court is to determine whether good cause existed for the tenant's alleged failure to return the declaration to their landlord within the notice period. This right is separate from the landlord's obligation to provide a copy of the declaration together with the notice, and the statute provides no way for a landlord to "cure" if they have not done so. Therefore, any notice served without the required declaration would be deficient under the statute and should not allow for a plaintiff to proceed with an unlawful detainer, as the notice would be deficient in such a case. However, the Council's proposal seems to provide such an opportunity where none exists under the statute: "For defendants who no longer have the declaration form served on them by the landlord (*or who did not receive one to begin with*), a declaration form is also included in the proposal (form UD-104(A)), which can be attached to the cover sheet" (emphasis added). The forms should make clear that the *defendant's* failure to deliver the declaration to the landlord may not bar them from the protections of AB 3088 if the court finds such failure was excusable under the statute, but should also make clear that the plaintiff's failure to provide the declaration in the first instance would bar the action entirely.

Furthermore, the court forms do not explain how the declaration of financial distress filing interacts with the normal deadline for a responsive pleading, despite the fact that the statute references the defendant's time to answer and does not specify a specific or separate procedure. This argues for flexibility in filing the declaration with the court; while tenants should be provided the opportunity to file the declaration independently, they should also be advised of their right to file it together with their answer to ensure that tenants who may meet the standard for protection under the statute are able to exercise their rights.

Similarly, while the court's determination of whether the tenant's failure to return the declaration was excusable is pending, no tenant should receive a default judgment. Tenants may submit the UD-104 explaining why they should not be subject to eviction due to COVID related hardship, but if their declaration is rejected for either a technical issue or because the judge finds that the tenant did not meet the CCP §473 standard, it is unclear what happens next. Although they should have the option, it does not make sense for tenants to be required to file an answer with their declaration, because the entire purpose of the declaration is to assert that the unlawful detainer may not proceed. Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h) and that no default may be entered against the tenant. Once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. Without this safeguard, tenants that are clearly intended to be protected under AB 3088 could be defaulted before their 1179.03(h) hearing, requiring the court to later set aside any default judgment that has been issued and creating a confusing situation with respect to writs that may issue based on such a judgment.

The Answer form should also be amended to reflect the addition of form UD-101 and its supplemental allegations. Proposed form UD-101 contains supplemental allegations for plaintiffs regarding compliance with new eviction protections, but no changes are proposed to the Answer form to allow Defendants to respond. Due to the fact that many tenants have (through no fault of their own) been unable to pay many months of rent, the vast majority of cases filed will demand damages which preclude the filing of a general denial. Tenants proceeding in pro se need an opportunity to contest the supplemental allegations easily. This requires amendment of the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

The supplemental cover sheet #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration, but does not contain instructions for the court based on this information. The CDC order prohibits landlords from taking steps towards eviction for any tenant who has returned the declaration unless a specific allowable reason exists, and includes penalties and criminal liability for violation of its requirements. Therefore, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless the plaintiff specifically alleges an allowable reason under the Order based on tenant fault.

In addition, several items require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

Finally, given the potential penalties and liability to landlords that proceed with eviction in violation of the CDC order, the cover sheet should alert plaintiffs to the ramifications of violating these protections.

4. Defendant's cover sheet (UD-104)

As discussed above, we recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Further, defendants should have the option of filing their declaration together with their answer if they believe their failure to provide it to the landlord under AB 3088 meets the statutory standard. The statute is clearly

intended to provide a simple procedure for the defendant to file the declaration, and thereafter puts the burden on the court to notify the plaintiff and make the required determination. CCP §1179.03(h). Additional procedural hurdles for tenants may preclude them from availing themselves of the statutory protections. During a pandemic when service is more challenging, the Council should not add burdens which are not called for in the statute and which may impede access to justice.

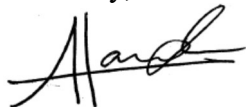
In addition to procedural concerns, the form itself requires significant modification. For example, the language in #2 states: “Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice...” This language is confusing and could be simplified significantly to better indicate the information required of the defendant, and should be designed to solicit all information which may exist to preclude the case from moving forward. The form should include check boxes allowing the tenant to assert that the landlord did not give the tenant the proper 15 day notice or the blank declaration (which should require dismissal of the case as discussed above), the tenant *did* give the landlord the AB 3088 declaration of financial distress, and/or that the tenant gave the landlord a declaration of financial hardship pursuant to the CDC order. There should be an additional checkbox allowing the tenant to explain why they did not return the AB 3088 declaration if one was provided with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

Further, the form should not request or require tenants to submit an English copy of the declaration. This is an inappropriate requirement which flies in the face of the statute’s intent to provide language access to California’s diverse communities and which would deny access to justice. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

5. Conclusion

We appreciate consideration of the above comments and urge the changes recommended herein to ensure access to justice, that no litigant’s statutory rights are curtailed by unclear or insufficient procedures, and that the benefits of new eviction protections with respect to our state’s recovery from the devastating effects of the COVID-19 pandemic are realized.

Sincerely,



Alexander Harnden
Public Policy Advocate
Inner City Law Center

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:34:22 AM

Proposal: SP20-06
Position: Agree
Name: Zach Newman
Title: Research Attorney
Organization: Legal Aid Association of California
Comment on Behalf of Org.: Yes
Address: 350 Frank H. Ogawa Plaza, 701
City, State, Zip: Oakland CA, 94612
Telephone: 5108933000
Email: znewman@laaonline.org
COMMENT:

I am writing on behalf of the Legal Aid Association of California (LAAC) to encourage the Judicial Council to proactively provide information to tenants about legal aid, LawHelpCA.org, and other avenues for legal help in redressing their housing claims whenever the unlawful detainer forms described in SP20-06 are provided. This will benefit not just low-income, vulnerable tenants by providing them with information and resources regarding the law and their options, but also to the court system by reducing strain through reducing unnecessary and illegal evictions.

LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.

Along with the forms provided through SP20-06, we believe it is imperative that low-income tenants across the state have all of the information they need to avoid eviction. With the possibility of a massive number of evictions in California due to COVID-19, it is essential that tenants know and assert their rights, both for ensuring a just outcome in their housing matter, but also for the continuing public health concerns of evicting people during the COVID-19 pandemic. While all of the new laws protecting tenants are valuable on their own, they must be enforced, and legal aid lawyers provide enforcement by ensuring each tenant that is being unlawfully evicted has their day in court. The myriad laws in place are complex, and tenants might not know who to turn to. This is where the Judicial Council can ensure vulnerable tenants know what to do.

The Judicial Council can, along with the forms, provide information and resources to tenants. Information is key, as we know there is a knowledge gap regarding legal issues in California. Because many tenants are self-represented or otherwise unrepresented, it is critical for the Judicial Council to provide information, resources, and referrals to tenants so they know what they can and cannot do. This would help reduce the number of unnecessary unlawful detainer filings—and thereby the strain on the courts—while ensuring a level playing field for tenants seeking redress.

Specifically, along with the forms, we recommend the Judicial Council provide information about tenant protections along with information on LawHelpCA.org and legal aid resources. AB 3088 explicitly mentions LawHelpCA.org as a site for legal resources that should be part of any notice that demands payment of COVID-19 rental debt. Other information could include, for example, information regarding to the federal Centers for Disease Control and Prevention (CDC) agency order temporarily halting evictions for failure to pay rent on public health grounds and the required hardship statement; the declaration of COVID-19-related financial distress under state law; and the requirement to pay the 25 percent minimum for rents due between September 1, 2020 and January 31, 2021, along with information and resources related to legal aid and LawHelpCA.org.

Ultimately, the objective is to prevent unnecessary evictions, and providing this information and resources proactively will benefit all access-to-justice stakeholders, the courts, and tenants. Thank you again for this opportunity to comment on behalf of our community. Please do not hesitate to reach out to me with questions or comments.

September 17, 2020

VIA ELECTRONIC MAIL

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688
invitations@jud.ca.gov

Re: SP20-06; Comment on Proposed Rule and Forms

Dear Judicial Council:

The Legal Aid Foundation of Los Angeles (LAFLA) writes to express our grave concern regarding the proposed adoption of mandatory forms UD-101 and UD-104. The proposed forms raise serious due process and access to justice concerns by providing plaintiffs an unnecessary, detailed guide to the unlawful detainer cause of action, while the UD-104 creates additional barriers for largely unrepresented unlawful detainer defendants across the state of California. In addition, amendments are required to the UD-105 unlawful detainer Answer form to account for defenses newly available under AB 3088. We urge the Council not to adopt these forms as proposed, and to make the additional changes to its materials recommended below.

As the frontline law firm for poor and low-income people in Los Angeles County, LAFLA advocates on behalf of thousands of tenants each year on various housing matters. We operate an extensive eviction defense practice. Through our work during the ongoing pandemic, we have seen first-hand the disastrous social and economic impacts wrought by COVID-19 on tens of thousands of tenants in the County of Los Angeles, particularly in poor and marginalized communities.

In the coming months as the impacts of the pandemic compound, advocates expect a surge of unlawful detainer suits to flood vulnerable and COVID-impact communities across California. Since long before the COVID-19 pandemic, California's unlawful detainer system has been plagued by issues of

due process, discrimination, and simple access to justice, particularly for low-income renters, renters of color, and those who are limited English-language proficient..

The bulk of defendants in these suits are self-represented. These tenants contend with sophisticated, experienced plaintiffs who are largely assisted by attorneys who specialize in eviction. Across the board, tenants are at a staggering disadvantage in unlawful detainer suits. The asymmetry of the legal resources available to landlords and tenants fuels the growing housing and homelessness crisis in the County of Los Angeles and elsewhere.

The stakes of these injustices could not be higher during the COVID-19 pandemic. California faces the worst public health and economic crisis in nearly a century. In May 2020, UCLA's Luskin Institute estimated that approximately 365,000 households in the County of Los Angeles alone were at high risk of eviction and potential homelessness. In August, the Aspen Institute estimated that more than 1.8 million renter households in California were at risk of eviction, including 600,000 in the County of Los Angeles.

We appreciate that the Judicial Council must act quickly to account for rapid changes in state law. We propose the following changes to the proposed forms:

1. Include more detail regarding the Center for Disease Control and Prevention Order.

The federal Centers for Disease Control and Prevention have issued a nationwide moratorium on evictions, published one day after passage of AB 3088. Local jurisdictions and tenants' advocates are attempting to incorporate the CDC's moratorium into education materials and to produce tenant declarations that will protect their rights under federal as well as state law. The CDC Order provides supplemental protections that are available to tenants not covered by AB 3088.

While form UD-101 does include a check box at subpart #4 for the landlord to state whether a tenant provided a CDC Declaration, it does not clarify that an unlawful detainer will not be accepted for filing if a tenant has submitted a CDC Declaration, unless the cause of action has a permitted basis.

The form should specify that unlawful detainers based on nonpayment and no-fault grounds may not proceed if a tenant has submitted a CDC declaration.

2. Form UD-101

Faced with an already problematic eviction system and an ongoing and unprecedented public emergency, the Judicial Council has nonetheless proposed a form that comprises a flowchart assisting landlords (who, again, largely have lawyers) to successfully evict tenants. The Council is therefore considering creating new tools to exacerbate the COVID-19 pandemic's contribution to California's housing and homelessness crisis.

Ninety-five percent (95%) of landlords in urban areas retain attorneys to help them evict their tenants. The community of unlawful detainer plaintiffs' attorneys is small and specialized, and will

undoubtedly familiarize themselves with the provisions of AB 3088 before they begin filing complaints in the coming months. Plaintiffs do not need the Judicial Council's help.

3. Form UD-104

Proposed form UD-104 does not address the effects on filing deadlines for responsive pleadings should a tenant complete and submit the UD-104. It is unclear when or how a tenant must file their responsive pleading should the court fail to make a finding that the tenant failed to certify COVID-19 impact on the basis of mistake, inadvertence, or excusable neglect. Defendants may fail to file a responsive pleadings and face default judgment if this issue is not clarified.

Further, the requirement that UD-104 be served on an opposing party must be removed from the form. Individual tenants are rarely hauled into court, and in the eviction context they face the terror not just of imminent homelessness, but also COVID-19 infection and all the consequences that may follow. Tenants are already at a tremendous disadvantage in these cases.

The service requirement reflects the pervasive fiction that tenants have resources equal to landlords and their attorneys during litigation. Low-income tenants already struggle to access even the most basic resources to draft, print, and file the necessary documents in an unlawful detainer suit. The Council's proposal disregards the simplest realities of unlawful detainer cases.

4. Form UD-105

Despite the sophistication of plaintiffs in these suits and their ready access to legal representation, and despite the particular dangers that evictions currently pose to vulnerable renters and the public at large, the Council has inexplicably drafted what amounts to an eviction guide for plaintiffs. The Council proposes to hold landlords' hands while walking them through a four-page, detailed aid for successful eviction. Alarmingly, no similar change has been proposed to Court Form UD-105 to assist defendants to assert their rights under the new and unfamiliar state law. Additions must be made to the Answer form to permit defendants to present a full and complete defense to unlawful detainer actions.

5. Conclusion

The Judicial Council should make the proposed changes to UD-101 and UD-104 and new amendments to UD-105 to protect the rights of defendants in unlawful detainer suits and avoid problems of due process and discrimination. The Council should direct its attention to the asymmetry of power between parties in unlawful detainer suits and consider what might be done to even the playing field for unrepresented litigants, particularly in this time of crisis.

Sincerely,

Joshua R. Christian
Staff Attorney, Eviction Defense Center
Legal Aid Foundation of Los Angeles

From: [Ronan, Anne](#)
To: [Invitations](#); [Salangsang, Khayla](#)
Subject: FW: Comments on Proposed Forms UD-101; UD-104; UD-104(a)
Date: Thursday, September 17, 2020 3:51:10 PM
Attachments: [Comments on Proposed JC Forms- UD-101; UD-104 and UD 104-A Final.pdf](#)

Another late comment that appears to have been sent only to me

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Margarita Santos <MargaritaS@lassd.org>
Sent: Thursday, September 17, 2020 2:48 PM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Cc: Greg Knoll <gek@cchea.org>
Subject: Comments on Proposed Forms UD-101; UD-104; UD-104(a)

Dear Ms. Ronan,

Please find attached comments on Proposed Forms UD-101; UD-104; UD-104(a).

Please let me know if you have any questions.

Sincerely,

Margarita Santos
Senior Executive Assistant
Legal Aid Society of San Diego, Inc.
110 S. Euclid Avenue ▪ San Diego, CA 92114
(619) 471-2621 direct ▪ (619) 263-5697 fax
www.lassd.org

DUE TO CONCERNS ABOUT COVID-19, PLEASE BE ADVISED THAT LEGAL AID SOCIETY OF SAN DIEGO, INC. OFFICES WILL BE CLOSED TO THE GENERAL PUBLIC UNTIL FURTHER NOTICE. PLEASE COMMUNICATE VIA TELEPHONE OR ELECTRONICALLY, AS WE ARE UNABLE TO ACCOMMODATE IN-PERSON MEETINGS AT THIS TIME.

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President, Board of Directors
MARK G. RACKERS, ESQ.
President-elect, Board of Directors
GREGORY E. KNOLL, ESQ.
CEO/Executive Director/Chief Counsel

September 17, 2020

SENT VIA ELECTRONIC MAIL

California Judicial Council
Civil and Small Claims Advisory Committee
Hon. Ann I Jones, Chair
Attention: Anne M. Ronan
anne.ronan@jud.ca.gov

Re: Comments on Proposed Forms UD-101; UD-104; UD-104(a)

Dear Judicial Council:

On behalf of Legal Aid Society of San Diego, Inc. (hereinafter "LASSD"), our clients, and tenants throughout the state, we thank you for acting quickly to implement the complex new laws protecting tenants from eviction during the pandemic. While the proposed forms contain much of the needed information to implement the new protections under federal and state law, we would like to identify several areas of concern and offer suggestions to address those concerns.

Legal Aid Society of San Diego, Inc. (hereinafter "LASSD"), which began as the "Office of the Public Attorney" and was later incorporated under its current name, provides free legal services to indigent people throughout San Diego County. Last year marked LASSD's 100th year in assisting clients in the fight against poverty and injustice. We are the largest poverty law firm in the county, with teams specializing in a number of priority areas including housing and fair housing law.

LASSD provides free legal representation to thousands of households each year facing rent increases, evictions, and imminent homelessness in San Diego County. We are often the last line of defense before homelessness for many indigent households in San Diego County. Even before the COVID-19 pandemic, many of our clients were rent burdened, paying more than 30% of their income towards rent and living month-to-month. Currently, we have experienced an unprecedented demand for housing-related legal assistance at LASSD. We expect the demand for housing-related legal assistance to continue to soar due to the ongoing pandemic.

Scope of Protections

While the invitation to comment and forms include brief reference to the CDC order, the description of the CDC Order's scope is inaccurate. The CDC order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship; the only evictions permitted are those based on specified tenant conduct: health and safety violations, criminal activity, or lease violations.¹ So the CDC order prohibits all no-fault

¹ The CDC Order specifically allows eviction only when "based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing

evictions in addition to nonpayment evictions.² Specific suggestions on how to incorporate the CDC order into the forms are below.

1. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

The supplemental cover sheet #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer should not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis. Unlawful detainers based on nonpayment of rent or any no-fault basis may not proceed against tenants who have submitted a CDC declaration.

In addition, several items require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at-fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no-fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

Finally, given the potential high liability (at least up to \$100,000 and 1 year in jail) to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

2. Defendant's cover sheet (UD-104)

We strongly recommend that filing UD-104 be one avenue for tenants to request relief under AB 3088 rather than the only permissible avenue, and that it only be filed with the court, not served on the plaintiff.

The main concern with the proposed form is defendants not being on notice of existence of form UD-104 as the way to request relief. The Judicial Council should require Plaintiffs to serve form UD-104 along with the Summons and Complaint so tenants are on notice they have five court days to file the UD-104. If defendants are not served with UD-104, those that

an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² In addition to this incorrect characterization of the CDC Order, footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme.

failed to provide a timely Declaration of Hardship to the landlord due to excusable neglect, mistake, or surprise could be deprived of the relief intended under AB 3088. Requiring this additional form for tenants to complete in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges.

Also, AB 3088 only requires that the declaration of financial distress be filed with the court; it does not require service on the plaintiff. CCP §1179.03(h). In fact, the statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring tenants to serve the form where the statute does not require service is not appropriate. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

In addition, the form itself is somewhat confusing. The language item number 2 is confusing. It says “Defendant’s response to plaintiff’s assertion that defendant did not return the signed declaration to the landlord within the time required in the notice...” Instead, the form should include a check box allowing the tenant to assert that they did serve either an AB 3088 declaration of financial distress or a declaration of financial hardship pursuant to the CDC order.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

Lastly, plaintiffs should be required to serve the UD-104 to defendants along with the Summons and Complaint to effectuate the desired intent of AB 3088. In enacting AB 3088, the legislature specifically created a procedure for a defendant to cure untimely delivery of the AB 3088 declaration. In order to effectuate the legislature’s intent, defendants need to be on notice of their ability to cure untimely delivery of the declaration. Requiring plaintiffs to serve this notice on defendants will ensure that defendants are on notice of their ability to cure and in turn help prevent mass displacement of indigent litigants. Additionally, the majority of defendants in residential unlawful detainers are pro se litigants. Many lack the sophistication and technology to be able to know their rights and timely access judicial council forms. The possible lack of timely access to the UD-104 forms could result in due process concerns for pro se litigants.

Thank you for your consideration and opportunity to comment on forms that greatly impact the day to day lives of our clients.

Very truly yours,



GREGORY E. KNOLL, ESQ.
CEO/Executive Director/Chief Counsel

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:41:11 AM

Proposal: SP20-06
Position: Disagree
Name: Tyler Lester
Title: Attorney
Organization: Tyler H. Lester, Attorney at Law
Comment on Behalf of Org.: No
Address: 1233 W. Shaw Suite 100
City, State, Zip: Fresno CA, 93711
Telephone:
Email: tlester@lesterlegal.net
COMMENT:
To Whom it may concern,

I would like to begin by saying that since AB 3088 was passed my clients and I have been working diligently to study the law and take the steps necessary to follow the law as it is written. For the judicial council to intervene, alter the law, and change the requirements is not only inappropriate and unjust, it is unconstitutional. My clients have suffered enough, 7 months now with no ability to exercise their rights as property owners. Enough is enough. We should be required to follow the law. But the proposed action by the judicial council would only create massive amounts of additional complications and confusion.

I will now restate the comments of my colleague John Cadwalader. I fully support and agree with his views on the subject.

From John Cadwalader:

My comments will focus on proposed Form UD-101. I believe the form needs modifications to comply with CCP 1179.01 et seq (CTRA). I am an attorney who regularly practices in the area of unlawful detainer law.

I believe the judicial council is far exceeding the intent of the legislature with proposed UD-101. The legislature enacted a simple proposed supplemental cover sheet that was not required to be signed under penalty of perjury. The Judicial Council is proposing what is essentially a mandatory complaint for unlawful detainer cases. As a mandatory form, it must be used in all unlawful detainer cases and must therefore be inclusive of all possible permutations of unlawful detainer causes of action. For example, UD-101 does not take into account the scenario where a residential property is rented to an entity and therefore exempt from the requirements of CTRA (See CCP 1179.02(h)). UD-101 also does not take into account the arguable inapplicability of the CTRA to termination of tenancies-at-will (tenancies of an indefinite period without payment of rent) which may be exempt as the tenant is not "hiring" the real property (Civil Code Section 789; Covina Manor v. Hatch (1955) 133 CA2d Supp 790, 792-793).

I believe the form also inaccurately states the law. For example paragraph 5 of UD-101 (and the background document provided with the invitation to comment) state that if the case is based on rent due before March 1, 2020, then no further information need be required under CCP 1179.03.5(a)(1). This is incorrect. CCP 1179.03.5(a)(1) provides that "The tenant was GUILTY (emphasis added) of the unlawful detainer before March 1, 2020." For a tenant to be guilty of unlawful detainer a proper termination notice must have been served and expired by February 29, 2020. If I were to serve a 3-day to pay or quit now demanding February 2020 rent, the applicable provision allowing the case to move forward would be CCP 179.03.5(a)(3)(A)(i) [that is an at-fault just cause]. To illustrate the issue with the form's argument let's consider that a landlord could now in September serve a 3-day to pay or quit demanding February 2020 rent and obtain a judgment including COVID-19 rental debt holdover damages through the date of entry of judgment, even if the tenant has properly submitted declarations of hardship. On the same issue, UD-101 is not inclusive of a case where, for example, a landlord properly served a 30-day notice to quit that expired

February 20, 2020. That would be a proper exemption under CCP 1179.03.5(a)(1) because the tenant is GUILTY of the UD before March 1, 2020 but there is no place to so indicate on the UD-101.

I also fail to understand the “Filed with (title of document, if any):” language on the top of the form. I am not sure why that is important and it is confusing. For example, I would expect that this form would frequently be filed at the same time as default packets in cases filed before October 5, 2020 which frequently include request for entry of default, proofs of service of summons, and judgment forms. Which document name should be entered on that line as the UD-101 being filed with? And why is it important especially given that it can be filed alone and not with any other document in cases filed before October 5, 2020?

Also, I believe language in paragraph 6a of UD-101 is exclusionary. It appears to require a form titled “Notice from the State of California” but many landlords using forms from the California Apartment Association will use Form CA-400 titled “Informational Notice of COVID-19 Tenant Relief Act of 2020” which contains the required language but the differences in titles may confuse the clerks. Perhaps the language in the form should be more generic and simply request a notice with complies with the requirements of CCP 1179.04. Also, each of the 15-day notices for protected and transition period require specific “Notice from the State of California” language and the use of the title is confusing in the form.

Paragraphs 6(c) and 8(a) of UD-101 refer to 15-day notice to pay, quit, or deliver a declaration. I think the language should be changed to reflect “was served with at least 15-days’ notice to pay, quit...”. Many practitioners are using notices which allow 15 days to pay or deliver a declaration, but 30 calendar days to vacate to ensure compliance with federal CARES Act moratorium. The existing form language is not inclusive of that type of notice and seems to imply that only a 15-day notice can be used when the language in the cited code section only requires “at least” 15 days’ notice.

I believe the references in form UD-101 to UD-100 are exclusionary of attorney-prepared complaints. I think a qualifier such as “if used” would be appropriate.

I understand the Judicial Council’s motives are good, but to enact such a restrictive and arguably inaccurate mandatory form is inappropriate and will only serve to confuse clerks and the judiciary as to the requirements of the CTRA. As noted in the background document, the committee’s first thought to not produce such a form including allegations was likely the best. The parties should be permitted to fully litigate the requirements of the CTRA without being handicapped by the Judicial Council.

I propose that instead of this mandatory form, that parties be allowed to use an optional declaration form for entry of clerk’s or court’s judgment similar to the UD-116. This would allow most cases to proceed with the judicial council form and also allow litigants to argue the law in more esoteric scenarios described above. (Perhaps with a comment that the form was rushed and may not apply to all situations.)

Also it is not clear to me if the proposed UD-101 is required to be served to the defendant, and how it would be required to be served. For example, would it be served with summons and complaint in new cases filed on or after October 5 and simply mailed in cases filed before October 5? Would there be a difference in complex cases where civil case cover sheet has to be served? I expect this would be an area of confusion with clerks and some direction would be helpful so practice is consistent across counties.

Tyler H. Lester
Attorney at Law
SBN 275950

From: [Kate Bridal](#)
To: [Ronan, Anne](#); [Invitations](#)
Cc: [Deepika Sharma](#)
Subject: Comments on SP20-06- Proposed Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 12:01:25 PM
Attachments: [Judicial Council AB 3088 Forms Comment Letter.pdf](#)

Dear Ms. Ronan and Judicial Council,

Attached, please find comments from Mental Health Advocacy Services, Inc. on SP20-06-Proposed Forms to Implement Assembly Bill 3088. If you have any questions, please direct them to myself or Deepika Sharma, dsharma@mhas-la.org.

Thank you for your consideration of these comments.

Sincerely,

--

Kate Bridal (She/Her)
Staff Attorney
Mental Health Advocacy Services, Inc.
3255 Wilshire Blvd., Suite 902
Los Angeles, California 90010
Office Phone: (213) 389-2077 xt. 14
Work From Home Phone: (901) 286-2080
kbridal@mhas-la.org

The logo for Mental Health Advocacy Services features the text "MENTAL HEALTH ADVOCACY SERVICES" in a bold, blue, serif font. The text is set against a light blue background with a stylized sunburst or starburst pattern in shades of blue and yellow.

3255 WILSHIRE BLVD. SUITE 902
LOS ANGELES, CA 90010
PHONE: 213-389-2077 | FAX: 213-389-2595
MHAS-LA.ORG

A nonprofit organization protecting and advancing the legal rights of people with mental disabilities.

September 17, 2020

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Via Email to: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Re: SP20-06- Proposed Forms to Implement Assembly Bill 3088

To the Honorable Chief Justice and the Judicial Council:

Mental Health Advocacy Services, Inc. (MHAS) writes in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. MHAS understands and appreciates that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the COVID pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training. These changes are necessary to avoid significant confusion and due process issues, particularly among tenants with mental health disabilities, such as the clients served by MHAS, who are already at a disadvantage when navigating the complexities of the court system.

MHAS clients survive on very fragile and limited incomes, such as minimum wage, disability benefits, and street vending. Those who remain housed are only tenuously so, often only one missed paycheck or benefit payment away from losing their homes. The stay-at-home orders meant to slow the progress of Covid-19 have resulted in many MHAS clients experiencing steep declines in their already minimal household incomes, threatening to send housed clients into the streets. This places MHAS clients, and all people with mental, physical, and developmental disabilities, in a particularly vulnerable position when it comes to eviction. Dealing with complex new eviction laws that require various forms and declarations to keep themselves from becoming homeless will be overwhelming for many people with disabilities. The constant threat of homelessness experienced by low-income people with disabilities is more insidious now than ever; the

deadly infectious disease at the heart of this crisis, Covid-19, disproportionately sickens and kills people with mental, physical, and developmental disabilities. As such, it is essential that these forms be clear and accurate to allow people with disabilities equal access to the protections provided by AB 3088 and the CDC order.

1. **Incorporation of the Centers for Disease Control and Prevention’s Order**

As the Judicial Council is aware, the CDC’s Order, “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. MHAS has been working to educate community partners and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.¹ So the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.² The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and

¹ [1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Fed.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;³ if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential

³ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. **Defendant's cover sheet (UD-104)**

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here."

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. (2 C.C.R. §12176).

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. MHAS is deeply concerned about access to justice for families and individuals who receive an unlawful detainer and cannot access legal aid, particularly those with disabilities. These families and individuals will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants, and a disproportionate effect on those with disabilities. At a minimum MHAS requests that the Judicial Council make the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

Thank you for your continued leadership in this unprecedented crisis, and for your consideration of these comments.

Sincerely,

Deepika Sharma

Deepika Sharma
Director of Legal Services
Mental Health Advocacy Services
(213) 389-2077
dsharma@mhas-la.org
<http://mhas-la.org/>

Kate Bridal

Kate Bridal
Staff Attorney
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From: [Ronan, Anne](#)
To: [Invitations; Salangsang, Khayla](#)
Subject: FW: Invitation to Comment (SP20-06)
Date: Thursday, September 17, 2020 11:54:01 AM
Attachments: [Letter to California Judicial Council.pdf](#)

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Randall Naiman <randall@naimanlaw.com>
Sent: Thursday, September 17, 2020 11:48 AM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Cc: Randall Naiman <randall@naimanlaw.com>
Subject: Invitation to Comment (SP20-06)

Dear Ms. Ronan:

Attached please find this law firm's comments to the Judicial Council of California's Invitation to Comment (SP20-06) regarding Judicial Council of California form UD-101 submitted on September 17, 2020, at 11:47 a.m.

Sincerely yours,

Randall D. Naiman, Esq. | Managing Director
NAIMAN LAW GROUP, PC | 4660 La Jolla Village Drive, Suite 650 | San Diego, CA 92122
T 858-224-6800 | F 858-224-6801 | randall@naimanlaw.com | <http://www.naimanlaw.com>

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4660 La Jolla Village Drive, Suite 650
San Diego, California 92122
Telephone (858) 224-6800
Facsimile (858) 224-6801

September 17, 2020

VIA EMAIL (anne.ronan@jud.ca.gov) AND FIRST-CLASS U.S. MAIL

Ms. Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Invitation to Comment (SP20-06)
Plaintiff's Mandatory Cover Sheet and Supplemental Allegations -
Unlawful Detainer

Ladies and Gentlemen:

In accordance with the above-referenced Invitation to Comment, Naiman Law Group, PC submits the following comments and proposed changes for your consideration:

Proposed Changes

In paragraph 6.c., strike the words "15-day notice to pay, quit," and insert the words "15-day notice to pay rent or quit or a notice to perform covenants or quit."

In paragraph 6.d.(3), strike the words "15-day notice to pay, quit," and insert the words "15-day notice to pay rent or quit or a notice to perform covenants or quit."

In paragraph 8.a., strike the words "15-day notice to pay, quit," and insert the words "15-day notice to pay rent or quit or a notice to perform covenants or quit."

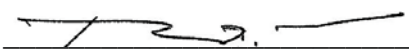
In paragraph 8.b.(3), strike the words "15-day notice to pay, quit," and insert the words "15-day notice to pay rent or quit or a notice to perform covenants or quit."

Comment

These proposed changes correspond with the text of the statute

Sincerely yours,

NAIMAN LAW GROUP,
Professional Corporation

By: 
Randall D. Naiman, Founder and Managing Director

From: [Deborah Thrope](#)
To: [Invitations](#); [Ronan, Anne](#)
Subject: Comments on New UD Forms
Date: Thursday, September 17, 2020 11:50:44 AM
Attachments: [2020.09.17_NHLP_JudicialCouncil_UDFormCommentsFINAL.pdf](#)

Dear Members of the Judicial Council,

Please see the attached letter in response to the Invitation to Comment, SP20-06, Unlawful Detainers: New Forms to Implement Assembly Bill 3088, on behalf of the National Housing Law Project. Thank you for the opportunity and please reach out with questions.

Sincerely,

--

Deborah Thrope
Deputy Director
National Housing Law Project
1663 Mission St. Suite 460
San Francisco, CA 94103
Phone: (415) 432-5724
Pronouns: she/her/hers





September 17, 2020

Judicial Council of California

Attn: Invitation to Comment

455 Golden Gate Ave.

San Francisco, CA 94102

Submitted via email to: invitations@jud.ca.gov; anne.ronan@jud.ca.gov;

Re: Invitation to Comment: Unlawful Detainers: New Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council of California:

The following comments on the Judicial Council of California's new Unlawful Detainer forms are respectfully submitted on behalf of the National Housing Law Project (NHLP). NHLP is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. As an IOLTA-funded support center, our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates throughout California. NHLP also hosts the national Housing Justice Network (HJN), a vast field network of over 1,500 community-level housing advocates and resident leaders. HJN member organizations are committed to protecting affordable housing and residents' rights for low-income families.

Thank you for acting quickly to implement the complex new laws protecting tenants from eviction during the COVID pandemic. Our comments below (1) highlight the complexities of CA's current tenant protection laws and implementation challenges (2) recommend how the proposed forms can be amended to carry out the intent of AB 3088 and the CDC order's nationwide eviction moratorium. We also request that the Judicial Council amend the UD answer form in order to address the supplemental allegations in the proposed form UD-101.

A web of complex tenant protections poses implementation challenges.

As the Judicial Council is aware, the CDC order implementing a nationwide eviction moratorium was published the day after our state law, AB 3088, was passed. Simultaneously, localities throughout the state are implementing their own Covid-related tenant protection policies. NHLP has been working with legal services and other partners across CA to identify the intersection of these policies and their impact on tenants. This has not been an easy task.

The CDC order was clearly intended to coexist with more protective state laws. It states, "in accordance with 42 USC § 264, this Order does not preclude local authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order." 85 Fed.Reg. at 55294. The referenced statute, 42 USC § 264 states that "[n]othing in this section....may be construed as superseding any provision under

State law ...except to the extent that such a provision conflicts with an exercise of Federal authority....” Given that eviction protections fall squarely within the police powers reserved to state and local governments, this provision makes it clear that the CDC order does not preempt the tenant protections in California’s state law, AB 3088. Instead this language allows state and local flexibility in enacting more robust protections from eviction beyond those provided by the CDC order.

In CA, the CDC language is logically interpreted to create a floor of protections which state and local laws may exceed in any given case. There are several ways in which the CDC order is more protective than state law including that it will help tenants who owe non-Covid-related rental debt as well as tenants being evicted for no-fault reasons such as owner move-ins. Consequently, what we have here in CA is a patchwork of broad, albeit complicated, tenant protections that could stem the predicted wave of evictions.

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage. We are collectively concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this web of policies on their own. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants.

NHLP is working with our state partners to train and educate not only legal services attorneys but non-lawyer stakeholders as well, in hopes that together, we can help tenants across the state understand that there are legal protections that apply to most families facing eviction. In addition, we urge the Judicial Council to adopt our recommendations below, which will minimize confusion and maximize protections for tenants during this public health crisis.

The CDC order provides important protections to tenants in California; the order must be fully incorporated into the UD forms and instructions

While the invitation to comment and forms include brief reference to the CDC order, the description of the CDC order’s scope is inaccurate. The CDC order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship; the only evictions permitted are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.¹ So the CDC order prohibits all no-fault evictions in addition to nonpayment evictions.² It is also important to note

¹ The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

that the CDC order protects tenants who face eviction based on rental debt from before March 1, 2020.

Plaintiff's cover sheet and supplemental allegations (UD-101) must be amended to reflect the CDC order and include instructions to clerks. The supplemental cover sheet #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, **the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.**

There will be cases where the landlord contests the veracity of the tenants' declaration. A logical method to allow such challenges would be to require landlords to apply for a show cause order from the court, which may then be served upon a tenant (ordering the tenant to show cause why a declaration should not be found invalid because of a fraudulent statement). Before issuing such a show cause order, the court should review the landlord's allegations and corroborating evidence, and grant the order only if a clear and convincing showing of fraud is present.

Both the CDC Order and form declaration make clear that a tenant's "declaration is sworn testimony, meaning that [a tenant] can be prosecuted, go to jail, or pay a fine if [they] lie, mislead, or omit important information." 85 Fed.Reg. at 55297. This suggests the intended consequence for a false declaration is prosecution for perjury—not eviction. Nothing in the CDC Order purports to allow the eviction of a covered person because of incorrect statements in a declaration, and even allowing a landlord to challenge the contents of a declaration (and thereby forcing a tenant to defend them) denies that tenant the full benefit of the protection and undercuts the public purpose of the CDC Order. Therefore, checking the box on the form is sufficient to halt the eviction and a challenge to the declaration would have to be handled in a separate noticed hearing.

The form should also specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration.

In addition, several items require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.

- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

The UD forms must be amended to preserve tenants' due process rights.

AB 3088 provides that where the landlord alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in CCP § 1167. However, neither the statute nor the court forms explain how the declaration of financial distress filing interacts with the normal deadline for a responsive pleading. Tenants may submit the UD-104 explaining why they should not be subject to eviction due to COVID related hardship, but if their declaration is rejected for either a technical issue or because the judge finds that the tenant did not meet the CCP §473 standard, it is unclear what happens next. It does not make sense for tenants to file an answer with their declaration, because the entire purpose of the declaration is to assert that the unlawful detainer may not proceed. Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, UD-104 should clearly state in bold letters at the top that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. Without this safeguard, tenants that are clearly intended to be protected under AB 3088 could be defaulted before their 1179.03(h) hearing. Similarly, as explained above, clerks must be advised to halt all filings if the landlord indicates in UD-101 that they received a CDC hardship declaration from the tenant.

The addition to form UD-101 and its check-box supplemental allegations necessitates amendments to the form Answer. Proposed form UD-101 allows plaintiffs to easily allege compliance with the new laws by checking boxes. However, tenants do not get an opportunity to contest these allegations with parallel checkboxes because no changes are proposed to the Answer form. Due to Emergency Rule 1, the vast majority of cases filed will demand large amounts of money and a general denial will not be permitted. Tenants proceeding in pro se need an opportunity to contest these supplemental allegations easily. While some tenants will learn of their legal rights and file a UD-104, many will not be able to access legal assistance and will not know to file anything other than an Answer. Tenants in those situations should have ready opportunity to contest the landlord's form allegations as set out in UD-101. This requires amendment of the Answer form.

The Council should consider these additional amendments to the defendant’s cover sheet (UD-104):

- We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.
- AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.
- The language of the instructions on the form should be edited to clearly explain the tenants’ rights in simple language. In addition, the language on UD-104 #2 is confusing. It says “Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice...” Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.
- There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”
- The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.
- The form should alert tenants to the possibility of other protections under the CDC order

and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

All forms should state the fair housing and reasonable accommodation rights of people with disabilities.

Last, because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment.

We appreciate your prompt response to the rapidly changing laws in California and invitation to comment. Please contact me with any question (Deborah Thrope, dthrope@nhlp.org).

Sincerely,



Deborah Thrope
Deputy Director
National Housing Law Project

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 12:00:55 PM

Proposal: SP20-06
Position: Disagree
Name: Trinidad Ocampo
Title: Supervising Attorney
Organization: Neighborhood Legal Services of Los Angeles
Comment on Behalf of Org.: Yes
Address: 1102 E. Chevy Chase Drive
City, State, Zip: Glendale CA,
Telephone: 8182911765
Email: trinidadocampo@nlsla.org
COMMENT:

I write to strongly oppose the adoption of the above two forms for mandatory use by the parties in unlawful detainer proceedings in California.

Whatever the motivation or intentions of the Civil and Small Claims Advisory Committee in proposing this action, adoption of these mandatory forms by the Judicial Council would amount to using its tremendous influence to assist property owners, and their attorneys, in expediting the eviction and displacement of low income, disabled, and limited English proficient tenants – primarily tenants of color.

The implementation of these forms would deny due process and equal protection to nearly all self-represented tenants by creating additional hurdles and obstacles, which they would be unlikely to overcome. In the end, the existing homeless crisis would be significantly exacerbated.

The proposed mandatory form for property owners appears as a helpful guide and checklist for any plaintiff's lawyer drafting an unlawful detainer complaint and the solid basis of a form complaint apparently blessed by the Judicial Council.

In contrast, the form proposed for mandatory use by tenants would undoubtedly result in confusion, lack of compliance and defeat before the tenant even reaches the courtroom to make their case. Adoption of these forms would signal to the public either indifference to equal justice concerns or, more charitably, basic unfamiliarity with that world not inhabited by judges, lawyers and their clients.

These proposals do not arise in a public health or economic vacuum, but in the middle of the worst public health and economic crisis California has faced in nearly a century. In Los Angeles County alone, approximately 365,000 households were at high risk of eviction and potential homelessness. Recent estimates have been significantly higher. The Aspen Institute estimated that in August more than 1.8 million California renter households were at risk of eviction, indicating about 600,000 households at such risk in Los Angeles County. These proposals also arise in the context of the longstanding vast disparity between the promise and the reality of equal access to justice in California and operate to aggravate that disparity with results that are in the current moment not only unfair but also potentially fatal.

To begin, these proposals effectively assumes that self-represented tenants somehow have access to the same technology and resources available to every landlord's lawyer. Approximately 95% of landlords in urban areas of California are represented by lawyers, with the great majority of cases being handled by a limited number of lawyers specializing in eviction cases who have a very strong incentive to stay abreast of every possible change in the law, court rules, or actions by the Judicial Council. Approximately 100% of lawyers representing landlords have access to computers, printers, copiers and can easily download and utilize forms mandated for use by the Judicial Council. By contrast, only a small fraction of tenants are represented by lawyers.

Tenants most at risk of eviction as a result of the COVID-19 pandemic are heavily concentrated in lower income communities and among people of color, who have even less access than most tenants to lawyers and have no ability to stay abreast of every possible change in the law, court rules, or even major decisions by the Judicial Council, let alone a mandatory form requirement imposed in a matter of days. To illustrate the challenges faced, for a tenant to comply with a requirement to file a mandatory form within 5 business days, they must first learn that there IS a mandatory form requirement that was imposed by the Judicial Council within the last two weeks-- not a matter of wide public interest or knowledge. Most tenants might learn of the mandatory form requirement upon traveling to a

courthouse on the fifth day after receiving the summons and complaint, except that they will never see a clerk because they didn't know they needed an appointment. Our office has heard from countless individuals who could not even reach a clerk by phone to make an appointment much less be able to obtain the necessary form in person as most do not have computers or printers at home. Then they must complete a form that does not appear to pass the readability test and have it served, which is impossible without the assistance of a third party.

The forms impose even greater hurdles on tenants who have limited English proficiency as they would be required to interpret the English language instructions but also to understand the requirements, sign the declaration and potentially a declaration in their native language. Even then, they would still need to obtain an English translation of such declaration to provide to the landlord. Even if represented by an attorney, obtaining translated documents may take days to turn around, especially if the tenant speaks a special dialect or less common non-English language. In stark contrast, landlord lawyers can file the mandatory documents electronically from their offices or homes with little issues.

Taking the language of CCP 1179.01.5 that invited the Judicial Council to develop a mandatory form to capture two pieces of information (whether the subject property is residential or commercial, and whether the action is based on nonpayment of rent) – which the proposed form does in two sentences -- the proposed mandatory form then goes on for four pages of allegations about matters that have nothing at all to do with AB3088, including allegations about the recent CDC public health order.

Similarly, the notice upon which an unlawful detainer complaint is based is already required by C.C.P. §1166(d) to be attached to the complaint and is, quite obviously, the best evidence September 15, 2020 Page 4 of its content.

Why, then, does the proposed mandated form provide the means for the landlord's lawyer to characterize the legal adequacy of that notice? The approach of the committee seems to have been that, so long as the Judicial Council mentioned the two pieces of information mentioned in CCP 1179.01.5, a mandatory form that did so could be used to serve any purpose at all.

Approval and implementation of these forms will provide the appearance that the Judicial Council putting its considerable thumb on the scales of justice on the side of those who are fortunate enough to have lawyers as well as own rental property and against those who have neither. Perhaps providing a detailed checklist of the substantive legal requirements of a complaint under the complicated legal regime enacted by the legislature in AB3088 (as well as the CDC) is a worthwhile use of the Judicial Council's resources. But one must ask, where is the analogous checklist for affirmative defenses an unrepresented tenant might include in answer to the complaint? The Judicial Council should reject the proposed adoption of forms UD-101 and UD-104. The Judicial Council should, instead direct its committees and all courts in California to attend to the realities faced by unrepresented litigants who are also trying both to survive and to obtain some measure of justice in the present crises.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:00:39 AM

Proposal: SP20-06
Position: Agree if modified
Name: Lynn Poncin
Title: Superior Court Judge
Organization: San Bernardino Superior Court
Comment on Behalf of Org.: No
Address: 247 W. 2nd Street
City, State, Zip: San Bernardino CA, 92417
Telephone:
Email:

COMMENT:

I believe Form 104A needs some modification to make it clear to the plaintiff and the bench officer. It would be clearer if the form instructed the Defendant to circle the applicable reasons why the person is unable to pay the rent. The form says the person is unable to pay the rent because of one or more of the following. Which ones? Is it one, some of them, or all of them?

From: [Emily Hislop](#)
To: [Ronan, Anne](#); [Invitations](#)
Cc: [Elizabeth Guzman](#)
Subject: Comment - UD: New Forms to Implement Assembly Bill 3088
Date: Thursday, September 17, 2020 12:17:58 PM
Attachments: [PS Dispute Resolutions Judicial Council letter 9.17.2020.pdf](#)

Please see the attached letter providing comment on new UD Forms to Implement Assembly Bill 3088.

Regards,

Emily Hislop

Rent Stabilization Programs Manager

Direct (Hablamos español): (408) 470-3736 | ehislop@housing.org
Project Sentinel | 1490 El Camino Real | Santa Clara, CA 95050 | www.housing.org

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Project Sentinel's Dispute Resolution Programs offer neutral counseling and dispute resolution services, but not legal advice or legal representation. For legal services, please contact an attorney or a lawyer referral service: For [Santa Clara County](#) 408.971.6822, for [Alameda County](#) 510.302.2222 (Option 4).



**Project Sentinel Dispute
Resolution Programs**

1490 El Camino Real
Santa Clara, CA 95050
www.housing.org | 408-720-9888

August 21, 2020

VIA EMAIL

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
anne.ronan@jud.ca.gov
invitations@jud.ca.gov

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

I am writing on behalf of Project Sentinel Dispute Resolution Programs in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws enacted to respond to tenancy issues during COVID-19 pandemic. Project Sentinel Dispute Resolution Programs division has the core function of providing neutral counseling dispute resolution services to tenants and housing providers. In addition to educating the public about landlord-tenant laws, supporting administration of several dispute resolution and rent stabilization programs, we also support Santa Clara County Superior Court through day-of court mediation services for Unlawful Detainer, Civil Harassment, and Small Claims Courts.

Of utmost concern to us with the complexity of AB 3088, is the additional burden placed on the Courts and possible confusion to litigants as to understanding what their rights and obligations are and how to avail themselves of the protections in the new law. We understand Courts have also endured significant cuts this summer and their Staffing and resources are stretched thin.

1. UD-104 Coversheet for Declaration of COVID-19 Related Financial Distress

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1)). If a tenant does file such a declaration in the proscribed time period, subsections (B) & (C) of CCP §1179.03(h)(1) provide that the Court will set and notice a hearing for the court to decide if the failure on the part of the tenant was a result of mistake, inadvertence, surprise or excusable neglect. While UD-104 provides a mechanism for a tenant to submit the declaration, it is not clear if the tenant must also file a responsive pleading at the same time. The consequences of a tenant, who is typically unsophisticated at legal forms and may have limited access to legal advice or help, not filing a responsive pleading with the UD-104 and a signed declaration could result in:

- (a) A clerk rejecting the filing and subsequently a default being entered against the tenant;
- (b) A tenant who fails to have the UD dismissed by the court per a finding under CCP §1179.03(h)(1) may be subject to default because no timely responsive pleading is on file

Both of these consequences could lead to additional court resources being expended if tenants file motions to set aside or landlords file motions to strike untimely pleadings.

We suggest that UD-104 have clear bolded instructions on what a tenant must do to avail themselves of the protections under CCP §1179.03(h)(1). This will also provide guidance to clerks on how to process filings.

2. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should indicate that an unlawful detainer may not be accepted for filing if the tenant has submitted a CDC declaration, unless it is filed on a permitted basis.

The form should also specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form could benefit from clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, consider having the cover sheet alert plaintiffs to potential civil and criminal penalties for violation of these protections.

Thank you for your work in implementing these new laws, and thank you for considering these comments, though hastily written. If you have any questions, please feel free to contact me at ehislop@housing.org.

Regards,
Emily Staats Hislop
Rent Stabilization Programs Manager
Project Sentinel

From: [Sam Tepperman-Gelfant](#)
To: [Invitations; Ronan, Anne](#)
Cc: [Richard Marcantonio; Shajuti Hossain](#)
Subject: Comments on Item No. SP 20-06
Date: Thursday, September 17, 2020 11:35:42 AM
Attachments: [Comments on Item SP 20-06 PA 9-17-20.pdf](#)

Please find attached comments from Public Advocates on Item No. SP 20-06 (Unlawful Detainers: New Forms to Implement Assembly Bill 3088).

Thank you,
Sam Tepperman-Gelfant



SAM TEPPERMAN-GELFANT
MANAGING ATTORNEY
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Gender pronouns: He / Him / His
** Please note that I am not currently working on Fridays. Thank you for your patience.*
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September 17, 2020

BY EMAIL: invitations@jud.ca.gov; anne.ronan@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: Item No. SP 20-06 (Unlawful Detainers: New Forms to Implement Assembly Bill 3088)

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Thank you for the invitation to comment on three proposed forms for unlawful detainer actions intended to implement the Legislature's recent action to protect residential tenants from eviction during the COVID-19 pandemic.

Our specific comments on the three forms (in section B of this letter) demonstrate the extraordinary and unanticipated complexity of the task of implementing AB 3088, given the fact that the Centers for Disease Control (CDC) adopted a federal eviction moratorium order the day after Governor Newsom signed that bill. These two concurrent legal frameworks demonstrate the effort of the state of California and the federal government to ensure that most renters are protected from eviction over the coming months of pandemic. Each is more protective in some respects, and less in others, leading to the complexity that confronts the Judicial Council in your effort to implement them with forms.

The complexity of the task faced by the Council mirrors, but is dwarfed by, the level of mass confusion facing renters and (for those lucky enough to have access to a Legal Aid office) their lawyers. The immediate challenge of the Legal Aid community is to educate renters about their rights under these new protections. That challenge stems not only from the short time within which renters must act to invoke those protections, but even more so from the fact that it is impossible to give general advice about which state or federal protection (or protections) a given renter should invoke. This challenge is particularly acute for the large number of tenants who lack legal assistance.

To implement the intent of the Legislature in these unanticipated circumstances, we urge the Council (in section A) to adopt a narrowly-tailored Emergency Rule to ensure that defendants are informed of the requirements for

submitting a declaration under the CDC Order, provided with a form to do so, and given a reasonable opportunity to do so before the action proceeds.

A. A New Emergency Rule Is Necessary To Avoid The Outcome The Legislature Sought To Avoid: The Mass Eviction Of Renters During A Public Health Crisis That Requires All Californians To Shelter In Place

When the Legislature adopted AB 3088, it found and declared that “the Judicial Council’s Emergency Rule 1, effective April 6, 2020, temporarily halted evictions and stabilized housing for distressed Californians in furtherance of public health goals,” and that, with the expiration of that Emergency Rule on September 1, “[t]here are strong indications that large numbers of California tenants will soon face eviction from their homes based on an inability to pay the rent or other financial obligations.” What the Legislature did not anticipate was the issuance of a completely separate federal legal framework protecting renters from eviction.

The CDC Order, coming just a day after the Governor signed AB 3088 into law, has brought welcome additional protections for renters, and in much of the country is providing valuable protections that were not offered by state or local governments. Here in California, however, the simultaneous existence of two (and in some of our larger cities or counties, three) regimes of protection with no common framework among them, threatens to undermine the intent of both the Legislature and the federal government.

It is clear that the CDC Order, while it does not preempt state and local laws that provide greater protections to tenants, creates a floor of protections which state and local laws may exceed in any given case.¹ It is equally clear here in California that AB 3088, while it will provide the strongest protections in some cases, will be less protective than federal law in others, in which case the federal law will apply. For one thing, the CDC Order applies to renters who are not covered by AB 3088; e.g., it does not require COVID-related hardship, as AB 3088 does. For another, the CDC Order prohibits all no cause evictions, including Ellis Act evictions and owner move-ins, which AB 3088 allows. The CDC Order, unlike AB 3088, also prohibits eviction actions based on rent owed prior to March 1, 2020.

In these and other respects, the floor of federal protections exceeds the protections provided by AB 3088. Individual tenants, however, will face enormous challenges parsing out those details that apply to them.

These distinctions in applicability and coverage are further exacerbated by the distinct declaration requirements each imposes, as well as the consequences of submitting those declarations. Under AB 3088, a tenant declaration must be submitted within 15 days of receipt of a landlord notice to pay rent or quit, and a new declaration must be provided each month in which a new 15-day notice is served. A tenant who has not submitted such a declaration prior to the filing of an unlawful detainer

¹ The CDC Order provides that “in accordance with 42 USC § 264, this Order does not preclude local authorities from imposing additional requirements that provide greater public-health protection and are more restrictive than the requirements in this Order.” 85 Fed.Reg. at 55294. In turn, the underlying statute provides that “[n]othing in this section....may be construed as superseding any provision under State law ...except to the extent that such a provision conflicts with an exercise of Federal authority....” 42 USC § 264.

action must then appear in court to demonstrate excusable neglect, in most cases without access to a lawyer.

Under the CDC Order, by contrast, a tenant may submit a declaration at any time, and the submission of that single declaration prohibits any action by the landlord to evict that tenant until January 1. The CDC Order defines such actions broadly. For instance, a landlord who has received a CDC declaration after obtaining a judgment of possession in an unlawful detainer action may not take any action to execute that judgment, such as obtaining a writ of possession or delivering it to the Sheriff's office. Finally, the CDC Order imposes criminal penalties on a landlord who takes any such action after receiving a tenant declaration.

Absent a new Emergency Rule to address the situation, it is foreseeable that tens of thousands of tenants will receive conflicting information about their rights, if they receive any at all, and will fail to properly invoke protections to which they are entitled under state law. The opportunity to demonstrate excusable neglect on a case-by-case basis is legally required, and appropriate when such neglect rests on individual facts and circumstances. But when excusable neglect can be anticipated on a mass scale as a result of confusion that the Legislature could not have foreseen, a more general safeguard must be put in place to serve the interests of justice.

We therefore respectfully request that the Council adopt an Emergency Rule suited to these unforeseen circumstances. The Rule we suggest would give tenants a last clear chance to invoke their rights under both AB 3088 and the CDC Order after a landlord has filed an unlawful detainer action by offering an additional opportunity for them to do so before further proceedings took place. For instance, such a rule could temporarily stay unlawful detainer actions upon their filing, so as to ensure that defendants are informed by the clerk of the court of the requirements for submitting a declaration under the CDC Order, provided with a form to do so, and given a reasonable opportunity to do so.

B. The Proposed Unlawful Detainer Forms Are Incomplete, And Additional Forms Should Be Revised To Implement AB 3088 And The CDC Order In California

While the proposed forms contain much of the necessary information, we have identified several errors and omissions that the Judicial Council should correct. Many of our comments concern protections that tenants may have under the CDC Order. While the forms briefly refer to the CDC order, their description of protections under the CDC Order for California tenants is inaccurate and incomplete. Our comments also seek to improve access to justice for the overwhelming number of tenants who will be facing eviction in the coming months. Many tenants will have to respond pro se while experiencing limited English proficiency, disabilities, and other challenges, and the current forms could fuel confusion and provide barriers to these litigants.

1. Background Section

The background section on these forms describe the legal requirements under AB 3088 and only briefly touches on the CDC Order. The background and forms should be revised (as described further below) to state that the CDC Order prohibits landlords from taking ANY steps towards evicting tenants who have submitted a declaration of hardship. It should state that the only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety

violations, criminal activity, or lease violations (85 Fed.Reg. at 55294.) The CDC Order prohibits all no-fault evictions in addition to nonpayment evictions. Specific suggestions about how to incorporate the CDC Order into the forms are below.

2. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

Number 4 on UD-101 includes checkboxes for the landlord to state whether the tenant provided a CDC declaration; however, it lacks essential information about the consequences of a renter declaration. After a tenant submits a CDC declaration to the landlord, the CDC Order prohibits the landlord from taking *any action* “to remove or cause the removal of a covered person from a residential property,” including filing an unlawful detainer based on nonpayment of rent or any no-fault basis against that tenant. Form UD-101 should alert plaintiffs to potential civil and criminal penalties for violating the CDC Order in such a manner. It should also describe the actions the court will take if a landlord proceeds with an eviction in violation of the CDC Order. Courts must ensure they do not knowingly accept eviction cases prohibited by the CDC Order and that they properly dismiss them if accepted unknowingly. Thus, the form should clearly state that the court will not file an unlawful detainer if the tenant has submitted a CDC declaration unless it for one of the narrow causes authorized by the CDC Order.

Several other items also require clarification to avoid confusing litigants:

- a) Number 6(d)(3) is confusing as to who is making the request for submission of documentation; it appears to suggest action on the part of the Defendant that would actually have to be taken by the landlord. The same confusing language appears at 8(b)(3).
- b) Number 8(c) contains a typo and should refer to January 2021.
- c) Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- d) Subpart 10(b) should be amended to state that no-fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.
- e) The instructions should require the landlord to serve a UD-101 on the tenant with the complaint.

3. Defendant's Cover Sheet (UD-104)

This should be an optional form for tenants to file with the court. Courts should not require tenants to serve this form on the plaintiff because AB 3088 only requires tenants to file their declarations with the court. In fact, it requires the court to give notice to the plaintiff after the tenant has filed the declaration. CCP §1179.03(h). Given that a greater than usual number of tenants will have to proceed pro se in coming months, another form for tenants to fill out and serve in an already complicated process will add an unnecessary barrier to justice.

The italicized text in the introductory box of this form should be changed in the following ways:

- a) Clearly state that tenants may qualify for other protections under the CDC Order and local laws.
- b) Advise tenants to seek legal advice through lawhelpca.org.
- c) Remove the requirement for tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring or requesting tenants to submit an English declaration.
- d) State that anyone experiencing a disability is entitled to reasonable accommodations and may request them as needed at any point during the process (including post-judgment). Tenants with disabilities are more likely to face additional barriers to timely assertion of their rights during the pandemic.

Number 2 is unclear and should therefore be replaced with:

- a) Multiple checkboxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration of COVID-19-related financial hardship, and 2) that they already provided an AB 3088 declaration of financial distress and/or a CDC declaration of financial hardship to their landlords.
- b) A space where tenants can explain why they did not provide either declaration to their landlords. This should use simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”
- c) Instructions stating that if tenants did not provide either declaration to their landlords, they have the opportunity to do so now.

Finally, this form should also attach the CDC Declaration of Financial Hardship. This will be a simple addition, as the CDC Order includes a sample declaration.

4. The Defendant Answer Form Should Also Be Amended (UD-105)

In addition to amending the Plaintiff’s Cover Sheet (UD 101), amendments should also be made to the Answer form (UD-105) to reflect essential changes to the law, avoid confusing litigants, and ensure access to justice for unrepresented tenants.

Specifically, form UD-105 should be amended to include checkboxes in section 3 (affirmative defenses) for defendants to indicate whether they provided a declaration to the landlord under AB 3088, under the CDC Order, or both. The provision of a declaration under the CDC Order is a complete affirmative defense to the prosecution of an unlawful detainer action, and the provision of a declaration under AB 3088 may be an affirmative defense to an action based on nonpayment of rent for a period subject to that declaration. The general denial of statements in the complaint provided in Section 2 is inadequate to address these issues. The form should also be amended to add relevant defenses specific to the requirements of AB 3088, including that the landlord did not serve a copy of the AB 3088 declaration with the 15-day notice.

Thank you for your consideration of these comments and for your efforts to ensure that litigants are fully able to understand and access their rights under the complex new state and federal rules governing evictions.

Sincerely,

Richard Marcantonio, Managing Attorney
Sam Tepperman-Gelfant, Managing Attorney
Shajuti Hossain, Law Fellow

From: [Amy Tannenbaum](#)
To: [Ronan, Anne](#); [Invitations](#)
Subject: comments on proposed UD forms
Date: Thursday, September 17, 2020 12:06:41 PM
Attachments: [PC 3088 JC comment letter 09.17.2020.docx.pdf](#)

Please find attached Public Counsel's comments on the proposed UD forms for Assembly Bill 3088.

Amy Tannenbaum

Staff Attorney
Homelessness Prevention Law Project

Pronouns: *she, her, hers*

Due to local emergency orders, our staff and attorneys are working remotely to continue providing services to our clients during this pandemic. Public Counsel's offices are currently closed and there is no staff onsite to accept service or delivery of documents.



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September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
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Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Public Counsel writes in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training.

We would like to highlight the concerns raised by Gary Blasi in his letter to the Council dated September 16, 2020. Our organization works with Professor Blasi and his analysis that the forms unfairly advantage landlords, who are overwhelmingly represented, should be given close attention.

In our view, simplest solution is for the Council to pause and take time to develop a more equitable solution. From an access to justice lens, of the two proposed documents, one appears to offer substantial assistance in navigating the allegations necessary to evict a tenant under the new laws and while the other is a barebones declaration for defendants which imposes an additional burden that isn't even required by the state statute. In order to be equitable to both parties, we suggest you pause the introduction of these forms and take the time to create an analogous form for Defendants to use that is as comprehensive on availing themselves of the new protections and defenses.

Alternatively, if the Council's primary concern is judicial efficiency and providing a quick way for judiciary staff to determine which

*Past Chair

cases should not move forward under the new laws, the Council should develop a simpler version of a cover sheet. That cover sheet should provide simple flags for the Court Clerk without providing a step-by-step legal primer for landlords.

If the Council decides to proceed with these forms, in order to fully implement the new laws, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101.

1. Incorporation of the Centers for Disease Control and Prevention’s Order

As the Judicial Council is aware, the CDC’s Order, “Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19” implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. Western Center has been working with legal services and other partners across California to educate advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.¹ So the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.² The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order

¹ The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and should be removed.

creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;³ if the declaration is accepted the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent

³ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

4. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

5. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15 day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here."

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an

advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

Conclusion

Our concerns with the forms as they exist are significant. Although we appreciate the time constraints in quickly implementing a new law with many provisions, we highly encourage the Council to take the time necessary to ensure that any forms do not exacerbate existing concerns about inequity and access to justice in the unlawful detainer courtrooms.

Sincerely,

Public Counsel

From: [Ugochi Nicholson](#)
To: [Ronan, Anne](#); [Invitations](#)
Subject: RE: Comment Letter re SP20-06
Date: Thursday, September 17, 2020 12:17:31 PM
Attachments: [SP20-06 - Comment Letter.pdf](#)

Dear Ms. Ronan,

Apologies. Please receive this amended letter.

Ugochi

Ugochi L. Anaeber-Nicholson | Directing Attorney

(pronouns: She/her/hers)

Housing and Homelessness Prevention Unit

Public Law Center

601 Civic Center Drive West

Santa Ana, CA 92701

714-541-1010, ext. 280 **direct** | 714-541-5157 **facsimile**

unicholson@publiclawcenter.org | www.publiclawcenter.org

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From: Ugochi Nicholson

Sent: Thursday, September 17, 2020 11:55 AM

To: 'anne.ronan@jud.ca.gov' <anne.ronan@jud.ca.gov>; 'invitations@jud.ca.gov' <invitations@jud.ca.gov>

Subject: Comment Letter re SP20-06

Good morning,

Comment Letter to SP20-06 attached.

Sincerely,

Ugochi

Ugochi L. Anaeber-Nicholson | Directing Attorney

(pronouns: She/her/hers)

Housing and Homelessness Prevention Unit

Public Law Center

601 Civic Center Drive West

Santa Ana, CA 92701

714-541-1010, ext. 280 **direct** | 714-541-5157 **facsimile**

unicholson@publiclawcenter.org | www.publiclawcenter.org

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PUBLIC LAW CENTER
PROVIDING ACCESS TO JUSTICE
FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Public Law Center (PLC) joins fellow advocates to write in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. PLC is a non-profit pro bono law firm that provides access to justice for low-income and vulnerable residents in Orange County. In our Affordable Housing and Homelessness Prevention Unit, we represent low-income families in housing-related matters and advocate for sensible strategies to end homelessness in Orange County. We also collaborate with community organizations, statewide advocates, and law firms to push Orange County jurisdictions to create and maintain effective housing policies for lower-income working families.

We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, immediate amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff as well as training.

1. Incorporation of the Centers for Disease Control and Prevention's Order

As the Judicial Council is aware, the CDC's Order, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. PLC has been working with legal services and other partners across California to educate advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which the court intends to prevent a worsening of the public health crisis through

mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.¹ Accordingly, the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.² The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord. However, if the court clerk rejects the UD-104 for a technical issue or if the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. The court should not require tenants to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a motion to dismiss;³ if the court accepts the declaration, the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

¹ [1] The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this would require a hyper-technical reading of the statute and a completely absurd result undermining the entire statutory scheme. This footnote is confusing and the court should remove it.

³ Recognizing that state law does not currently allow tenants to file motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

In order to preserve tenants' right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that d from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101) and on the other side, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute, UD-104. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC

declaration. As such, adequate training of clerks is necessary to prevent detrimental effects on tenants in the eviction court process.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint.

In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that tenants who choose to file it, only file it with the court and not be required to serve on the plaintiff. We have a number of people in our service area who are monolingual in a language other than English, and we fear that *pro se* defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons. This confusion could allow the court to process the form and set the required hearing or provide the litigant with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that the court may not enter default once the form is filed. Again, clerks will need to be trained on this essential issue.

AB 3088 only requires that the declaration of financial distress be filed with the court. It does not require service. CCP §1179.03(h). The statute provides that the court give notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed *pro se*. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for *pro se* tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language on UD-104 #2 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that: 1) the landlord did not give the tenant the 15 day

notice or the blank declaration; 2) the tenant did give the landlord the AB 3088 declaration of financial distress; and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as “If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here.”

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants and there is no basis for requiring tenants to submit an English declaration.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities inherent to the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for families who receive an unlawful detainer and cannot access legal aid. These families will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum, we request that the Judicial Council made the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

Thank you for your work in implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me at unicholson@publiclawcenter.org

Sincerely,

/s/

Ugochi Anaebere-Nicholson

Directing Attorney, Affordable Housing and Homelessness Prevention Unit

From: [Jodi Prior](#)
To: [Invitations](#)
Subject: Comments re New Forms to Implement AB 3088
Date: Thursday, September 17, 2020 11:26:09 AM

Hello

My name is Jodi Prior and I am a Court Attorney with the Ventura Superior Court Self-Help Center. Please see my comments below:

UD-101:

Instructional Paragraph below the heading and before paragraph 1: I think the instructions are somewhat unclear as to what sections the Plaintiff is to complete for an Unlawful Detainer Action filed on or after October 5, 2020. The first sentence directs the Plaintiff to complete all sections of the form for UD actions filed prior to October 5. But the instructions do not indicate what sections the Plaintiff completes after October 5.

CARES ACT addition: I think there should be a paragraph added regarding the applicability of the CARES Act as paragraph 5. If the subject property is a "covered property" under the CARES Act, then the Tenant must have been served with a 30 Day Notice or a combo 15/30 day notice if failure to pay rent is at issue. The Plaintiff/Landlord should know or have access to the information necessary to determine whether the property is "covered" - for example having a federally backed mortgage loan, federal loan forbearance, or participating in a federal housing program. Some states have established court rules requiring the Plaintiff to establish non-coverage of the CARES Act. The argument is that the Plaintiff should bear the burden of establishing the non-applicability since the Plaintiff landlord has access to the information from which to determine whether the moratorium applies, and the Defendant/Tenants generally do not.

UD-104:

Instructional Paragraph: There is a typo in the first bullet point. It should read "signed" instead of "signded"

I think it would be helpful to self-represented litigants, if the instructions indicated whether each defendant needs to complete to their own declaration (as there are often multiple Defendants in UD Actions). The form appears to indicate that each defendant will complete and sign their own Cover Sheet, however, I think it should be explicit.

Thank you,

Jodi

mailgate.ventura.courts.ca.gov made the following annotations

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intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 9:49:41 AM

Proposal: SP20-06

Position: Agree if modified

Name: Leslie Mackay

Title: Supervising Attorney

Organization: San Diego Volunteer Lawyer Program

Comment on Behalf of Org.: Yes

Address: 707 Broadway, Suite 1400

City, State, Zip: San Diego CA, 92101

Telephone:

Email: lmackay@sdvlp.org

COMMENT:

SDVLP suggests on UD-101, number 9, adding "check all that apply". SDVLP suggest on UD-101, number 10, adding "select a, b, or c" for clarity.

From: [Liberty Sanchez](#)
To: [Invitations](#)
Subject: SEIU Comments Re: Unlawful Detainers: New Forms to Implement AB 3088 - INVITATION TO COMMENT SP-20-06
Date: Thursday, September 17, 2020 11:49:01 AM
Attachments: [Judicial Council AB 3088 Forms Comments.pdf](#)

Attached, please find comments on behalf of SEIU California re: Unlawful Detainers: New Forms to Implement AB 3088, in response to INVITATION TO COMMENT SP 20-06

Please do not hesitate to contact me if you have any questions or are in need of any additional information.

Thank you,

Liberty Reiter Sanchez
Sanchez Advocacy
libby@sanchezadvocacy.com
(916) 213-1440



September 17, 2020

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

Re: Unlawful Detainers: New Forms to Implement Assembly Bill 3088

Hon. Ann I. Jones and Members of the Judicial Council,

On behalf of the court workers we represent, and the SEIU members who will be affected by the new laws protecting tenants from eviction during the COVID pandemic, we thank you for the opportunity to comment on the proposed new forms to implement AB 3088. While the proposed forms will provide much clarity and direction to all affected, we urge the Judicial council to adopt amendments to the proposed forms to address concerns raised below. Further, we urge Judicial Council to ensure that court staff are provided training regarding the new forms particularly as it relates to guidance on dates and requirements expeditiously and prior to adoption of the forms, as failure to provide such training and guidance will lead to unnecessary hardships to tenants and court workers alike.

After AB 3088 was signed into law, the CDC issued an order prohibiting evictions covering much of the same timeframe as AB 3088. While Judicial Council is correct to incorporate reference to the CDC order in these forms, the interpretation of the relationship between the CDC order and AB 3088 as articulated in the current draft of the forms is inaccurate and should be corrected. Specifically, the CDC order prohibits landlords from taking any steps towards eviction for tenants that have submitted a declaration of hardship; the only evictions permitted are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations. **Accordingly, the CDC order prohibits all no-fault evictions in addition to nonpayment evictions.** Footnote 6 of the Invitation to Comment suggests instead that nonpayment cases may proceed despite AB 3088. This interpretation does not comport with either a plain read or the intent of AB 3088. It is also important to note that the CDC order protects tenants who face eviction based on rental debt from before March 1, 2020. The form should alert tenants to the possibility of other protections under both the CDC order and local laws, and it should advise tenants to seek legal advice through lawhelpca.org.

AB 3088 provides that where the landlord alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in CCP § 1167. However, neither the statute nor the court forms explain how the declaration of financial distress filing interacts with the

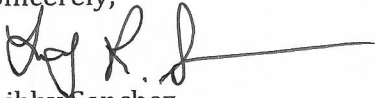
normal deadline for a responsive pleading. This confusion will lead to the unintended consequences of protected tenants being subject to eviction, and of additional and unnecessary workload for court employees, and should be clarified to ensure that tenants have a clear understanding of deadlines and how they interact with one another. Additionally, while tenants may submit the form explaining why they should not be subject to eviction due to COVID related hardship, if their declaration is rejected for either a technical issue or because the judge finds that the tenant did not meet the CCP §473 standard, next steps are not clear. Accordingly, in order to preserve tenants' right to file a responsive pleading, the form should state that once filed, the clerk should set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Further, once a tenant has filed the declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing and the tenant fails to file a responsive pleading within the time set by the court. **Without this safeguard, we are gravely concerned that tenants that are clearly covered under AB 3088 could be defaulted prior to their 1179.03(h) hearing.**

While proposed form UD-101 allows landlords to easily allege compliance with the new laws by checking boxes, tenants are not afforded the opportunity to contest these allegations with parallel checkboxes because no corresponding changes are proposed to the answer form. Tenants need a clear and easy opportunity to contest these allegations. While some tenants will learn of their legal rights and file a UD-104, many will not be able to access legal assistance and will not know to file anything other than an answer. Tenants in those situations should have ready opportunity to contest the landlord's form allegations as set out in UD-101. This requires amendment of the answer form. Failure to adopt these corresponding changes will lead to inequitable access to justice, and confusion among both tenants and court workers.

Finally, AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. Requiring an additional form for tenants to complete and serve in an already complicated process will create an unnecessary barrier to justice and comports with neither a plain read or the intent of the law.

Thank you once again for providing us the opportunity to comment on the proposed forms. Please do not hesitate to contact me with any questions, or if you are in need of any additional information at (916) 213-1440 or libby@sanchezadvocacy.com.

Sincerely,



Libby Sanchez
Legislative Advocate
SEIU California

From: invitations@jud.ca.gov

To: Invitations

Subject: Invitation to Comment: SP20-06

Date: Thursday, September 17, 2020 12:58:59 PM

Proposal: SP20-06

Position: Disagree

Name: Molly Kirkland

Title: Director of Public Affairs

Organization: Southern California Rental Housing Association

Comment on Behalf of Org.: Yes

Address: 5675 Ruffin Road, Ste. 310

City, State, Zip: San Diego CA, 92123

Telephone: 858-751-2200

Email: mkirkland@socalrha.org

COMMENT:

Thank you for the opportunity to comment on the proposed practices and procedures related to AB 3088. The Southern California Rental Housing Association is very concerned with the potential pitfalls not only in the legislation, but also in the court process moving forward. As such, we are providing the following comment for your consideration. A clear understanding of the law, and one that is uniform across the state, is of the utmost importance. Property owners and managers, judges and court staff, tenant and landlord attorneys, and tenants will all benefit from clarity moving forward.

CDC Declaration

The inclusion of the CDC declaration will lead to a great deal of confusion. Item 4 inquires whether the tenant was served a copy of the CDC declaration. The Governor of California stated that the CDC order is less protective than the AB 3088, and therefore, AB 3088 will need to be adhered to by property owners and managers. The Judicial Council creating a box asking whether the notice had been served creates a presumption that the CDC order overrides California law.

Rent Due Before March 1, 2020

Another item that warrants clarity is that AB 3088 states a tenant must be guilty of an unlawful detainer prior to March 1, 2020. Item 5 states based solely on a demand for payment of rent before March 1, 2020. Guilty of unlawful detainer per CCP 1161 states the notice must have been served and expired. As we read the statute, the landlord may only proceed if they served a notice prior and that expired before March 1, 2020.

DRE Notices

Although the Judicial Council is not responsible for the content produced by the Department of Real Estate (DRE), we believe that the documents provided on the website for landlords are likely defective and would result in the landlord's case being dismissed. Documents provided by the state should not place any party at a disadvantage. Judicial Council would be wise to review those documents to make sure they are legally accurate and will be in line with the procedures ultimately adopted. [https://gcc02.safelinks.protection.outlook.com/?](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flandlordtenant.dre.ca.gov%2Flandlord%2Fforms.html&data=02%7C01%7CInvitations%40jud.ca.gov%7C25950c9edf3d45f3855208d85b441ca6%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637359695383892380&sdata=%2BqB1TzI7tpq2Qg6BB8wJv%2FIJlbusYn4KgZ8lDZ8u3rc%3D&reserved=0)

[url=https%3A%2F%2Flandlordtenant.dre.ca.gov%2Flandlord%2Fforms.html&data=02%7C01%7CInvitations%40jud.ca.gov%7C25950c9edf3d45f3855208d85b441ca6%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637359695383892380&sdata=%2BqB1TzI7tpq2Qg6BB8wJv%2FIJlbusYn4KgZ8lDZ8u3rc%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Flandlordtenant.dre.ca.gov%2Flandlord%2Fforms.html&data=02%7C01%7CInvitations%40jud.ca.gov%7C25950c9edf3d45f3855208d85b441ca6%7C10cfa08a5b174e8fa245139062e839dc%7C0%7C0%7C637359695383892380&sdata=%2BqB1TzI7tpq2Qg6BB8wJv%2FIJlbusYn4KgZ8lDZ8u3rc%3D&reserved=0)

Again, thank you for the opportunity to comment and share our concerns. We strive to education our membership to be in compliance with all laws, which we can only do if the policies and procedures are clear, concise, and equitable.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 3:41:55 PM

Proposal: SP20-06
Position: Agree
Name: Bryan Borys
Title:
Organization: Los Angeles Superior Court
Comment on Behalf of Org.: Yes
Address:
City, State, Zip: Los Angeles CA,
Telephone:
Email: bborys@lacourt.org
COMMENT:
The Los Angeles Superior Court supports these proposals.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 2:18:23 PM

Proposal: SP20-06
Position: Agree
Name: Lester Perpall
Title: CEO
Organization: Mono County Superior Court
Comment on Behalf of Org.: Yes
Address: 100 Thompson Way, PO Box 1037
City, State, Zip: Mammoth Lakes CA, 93546
Telephone: 7609245444
Email: lperpall@mono.courts.ca.gov
COMMENT:

From: [Chris Ruhl](#)
To: [Katy Grant](#); [Downs, Benita](#)
Cc: [Diana Valenzuela](#); [Monica J. Mitchell](#)
Subject: RE: New Proposals: Invitation to Comment: Forms, Rules of Court, and Legislation (Special Cycle)
Date: Wednesday, September 16, 2020 1:30:07 PM

Also please note one **typo** in the first bullet of the form on p. 13 of the Invitation to Comment linked below:

- *Sign the form provided by the landlord or, if not available, defendant may sign the declaration in form UD-104(A). Attach the **signed** declaration to this form.*

Thank you,

Chris Ruhl

(831) 775-5678

From: Katy Grant
Sent: Wednesday, September 16, 2020 12:37 PM
To: Benita.Downs@jud.ca.gov
Cc: Chris Ruhl <Chris.Ruhl@monterey.courts.ca.gov>; Diana Valenzuela <Diana.Valenzuela@monterey.courts.ca.gov>; Monica J. Mitchell <Monica.Mitchell@monterey.courts.ca.gov>
Subject: RE: New Proposals: Invitation to Comment: Forms, Rules of Court, and Legislation (Special Cycle)

Good Afternoon,

Thank you for the opportunity to comment. The proposed forms should prove valuable to the parties and to the courts in navigating through the new eviction law. In the spirit of assisting the parties with understanding the law and the actions available to them, we suggest the following additions:

1. Cover Sheet/Supplemental - should the form reference the 9/30/20 due date to serve the Notice from State of California? (Item 6a)
2. Cover Sheet/Tenant Dec – should the form mention first paper fees or fee waiver? (info box)
3. Cover Sheet/Tenant Dec – should a proof of service be part of the form itself? (see reference in info box, last bullet)

Best!

Katy

[Katy Grant](#)
Chief Operations Officer
Superior Court of California, County of Monterey

240 Church St.
Salinas, CA 93901
Tel: (831) 775-5496

From: Downs, Benita <Benita.Downs@jud.ca.gov>

Sent: Monday, September 14, 2020 2:19 PM

To: Cantil-Sakauye, Tani [REDACTED]; JCC Admin. Pres. Justices
[REDACTED]; JCC PJs - All Trial Courts [REDACTED]; JCC
Appellate Court Clerk Executive Officers [REDACTED]; JCC
Court Execs - ALL Trial Courts [REDACTED]; JCC Appellate Court
Managing Attorneys [REDACTED]

Subject: New Proposals: Invitation to Comment: Forms, Rules of Court, and Legislation (Special Cycle)

Importance: High

Dear Chief Justice Cantil-Skauye, Administrative Presiding Justices, Presiding Judges, Clerk Executive Officer of the Supreme Court, Clerk Executive Officers of the Courts of Appeal, Court Executive Officers, and Appellate Court Managing Attorneys:

This e-mail is to inform you 1 new proposal (SP20-06) have been posted to the California Courts web site, at <http://www.courts.ca.gov/policyadmin-invitationstocomment.htm>

Civil and Small Claims

SP20-06

Unlawful Detainers: New Forms to Implement Assembly Bill 3088

Summary: The enactment of the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (Assem. Bill 3088; Stats. 2020, ch. 37) changes the practice and procedures relating to all residential unlawful detainer actions from now until January 31, 2021, and for a longer period for actions based on unpaid rent due at any time between March 1, 2020, and January 31, 2021. The Civil and Small Claims Advisory Committee proposes three new forms to assist courts and parties in complying with this new law.

Deadline: Review and submit comments by **12:00 noon on Thursday, September 17.**

You are welcome to distribute this within your court and to any other interested parties.

If you have any questions, please contact Benita Downs, at benita.downs@jud.ca.gov, or at 415-865-7957.

We greatly appreciate your time and dedication to the continued improvement of administration of justice in California.

Sincerely,

Benita Y. Downs, Associate Analyst
Legal Services | Leadership Services Division
Judicial Council of California
455 Golden Gate Avenue, San Francisco, CA 94102-3688
415-865-7957, Fax 415-865-4391, benita.downs@jud.ca.gov
www.courts.ca.gov

From: [Ronan, Anne](#)
To: [Invitations](#); [Salangsang, Khayla](#)
Subject: FW: ITC SP20-06 OCSC Civil and SHC Management Comments
Date: Thursday, September 17, 2020 1:43:37 PM
Attachments: [image001.wmz](#)
[SPR20-06 OCSC Civil and SHC Team Comments.docx](#)
[image002.wmz](#)
[image004.png](#)

Here is one more.

Anne Ronan, Supervising Attorney
Legal Services | Leadership Services Division
Judicial Council of California
415-865-8933 | Anne.Ronan@jud.ca.gov | www.courts.ca.gov

From: Sean Lillywhite <slillywhite@occourts.org>
Sent: Thursday, September 17, 2020 1:38 PM
To: Ronan, Anne <Anne.Ronan@jud.ca.gov>
Cc: Dennis Ma <dma@occourts.org>; Cynthia Beltran <cbeltran@occourts.org>; Ngoc Nguyen <n2nguyen@occourts.org>
Subject: ITC SP20-06 OCSC Civil and SHC Management Comments

Hi Anne,

I apologize for not noticing that there was a noon deadline today for the ITC on the new UD forms. Please consider accepting the attached comments on behalf of the Civil and Self Help UD Management Team from Orange County. Let us know if you have any questions.

Regards,

Sean E. Lillywhite
Administrative Analyst/Officer
Training & Analyst Group (TAG)
Superior Court of California, County of Orange
(657) 622-7267
slillywhite@occourts.org

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General Comments

Is the intent of the JCC to sunset or revise these forms on February 1, 2021?

Comments – UD 101 PLAINTIFF'S MANDATORY COVER SHEET AND SUPPLEMENTAL ALLEGATIONS—UNLAWFUL DETAINER

For clarity and brevity, consider combining section 5, 6 and 8 into recommended sections 5 and 6 below:

5. The unlawful detainer complaint in this action is based, in whole or in part, on a demand for rent payment:

a. **Before March 1, 2020** (*If this is the only basis for the action, no further items on this form need to be completed except the signature and verification on page 4.*)

b. **Between March 1, 2020 and August 1, 2020** (*Protected period*)

Defendant (*name each*):

was served with:

A form titled "Notice from the State of California" as mandated in Code of Civil Procedure section 1179.04, and if more than one defendant, on the same date and in the same manner. (Provide information regarding service in item 7 below.)

Defendant (*name each*):

was served with an:

A 15-day notice to pay, quit, or deliver a declaration, and an unsigned declaration of COVID-19–related financial distress, in the form and with the content required in Code of Civil Procedure section 1179.03(b) and (d). (If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that form, and provide all requested information about service on that form.)

The unsigned declaration of COVID-19–related financial distress was provided to the defendant was in (Check all that apply):

English

Spanish

Other (*Specify*):

c. **Between September 1, 2020 and January 31, 2021** (*Transition period*)

Defendant (*name each*):

was served with

A 15-day notice to pay, quit, or deliver a declaration, and an unsigned declaration of COVID-19–related financial distress, in the form and with the content required in Code of Civil Procedure section

1179.03(b) and (d). (If filing form UD-100 with this form and item 6c is checked, specify this 15-day notice in item 9a(7) on form UD-100, attach a copy of the notice to that form, and provide all requested information about service on that form.)

The unsigned declaration of COVID-19–related financial distress was provided to the defendant was in (Check all that apply):

English

Spanish

Other (Specify):

One or more defendants was served with the notice in item 6a on a different date or in a different manner, which is described in attachment 7c.

d. **Rent due** (complete only if action filed after January 31, 2020):

(1) Rent in the amount of \$ _____ was due between September 1 and January 31, 2021.

(2) Payment of \$ _____ for that period was received by January 31, 2021.

6. Response to notice (check all that apply):

a. Defendant (name each):

delivered a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(e).)

b. Defendant (name each):

did not deliver a declaration of COVID-19–related financial distress on landlord in the time required. (Code Civ. Proc., § 1179.03(e).)

c. Defendant (name each):

delivered the requested submission of documentation supporting any declaration due to being identified as a high-income tenant (Code Civ. Proc., § 1179.02(c).) (Complete item 9 below.)

d. Defendant (name each):

did not deliver the requested submission of documentation supporting any declaration due to being identified as a high-income tenant (Code Civ. Proc., § 1179.02(c).) (Complete item 9 below.)

Comments – UD 104 COVER SHEET FOR DECLARATION OF COVID-19–RELATED FINANCIAL DISTRESS

First sentence below caption, remove bold font on the hyphen and letter “-r” in “COVID-19-related”.

In reference to the statement: “If defendant signs and attaches a “different” non-English language declaration, a translation must also be attached, and signed by the translator.” Are there any requirements that would result in a rejected filing, i.e. no translator signature, no translator credentials, no certification, or notarization? In other words, are these “different” translations to be accepted as is, subject to voir dire of translator qualifications, when possible?

Where possible, the financial distress declaration form provided by the landlord should be the one filed, so that the courtroom can also evaluate if the landlord's provision of the financial distress

declaration notice was legally compliant (and if not, subject to dismissal under CCP 1179.). The tenant should have the opportunity to allege that the landlord never provided a financial distress declaration in the first place.

Since UD-104 is mandatory and defendant must attach it when filing the signed declaration, consider including the following interrogatory under section 2:

Plaintiff (*mark one*): did , did not provide a declaration of COVID-19–related financial distress (*if not, you may file form UD-104(A), if you do file form UD-104(A), this form UD-104 **must** be included.*)

Comments – UD 104(A) ATTACHMENT—DECLARATION OF COVID-19–RELATED FINANCIAL DISTRESS

No comment

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Thursday, September 17, 2020 11:39:00 AM

Proposal: SP20-06
Position: Agree if modified
Name: Susan Ryan
Title: Chief Deputy of Legal Services
Organization: Riverside Superior Court
Comment on Behalf of Org.: Yes
Address:
City, State, Zip: Riverside CA, 92052
Telephone:
Email: susan.ryan@riverside.courts.ca.gov
COMMENT:

I appreciate the quick work that went into developing a coversheet intended to comply with the newly enacted COVID-19 Tenant Relief Act of 2020. Code of Civil Procedure section 1179.01.5 requires plaintiffs in an unlawful detainer action file a coversheet that does two things: (1) identifies whether the action seeks possession of commercial or residential property, and (2) if the action concerns residential property, states whether it is based in whole or in part on the nonpayment of rent or other charges. Proposed form UD-104 goes far beyond these requirements. It includes, among other things, whether the plaintiff provided the federal CDC statement to the defendant, compliance with the new noticing procedures, and duplication of the information in the proof of service concerning service of the Notice from the State of California (item 7). These supplemental allegations are more appropriately included as a part of the unlawful detainer complaint, not the coversheet. As part of the coversheet they are confusing.

When an unlawful detainer is filed the clerk needs only to know whether the action concerns commercial or residential property, and if it involves residential property whether the action based in part on the nonpayment of rent. I suggest creating a separate mandatory form containing the supplemental allegations that would be attached to the unlawful detainer complaint.

From: [Meyerowitz, Rosy](#)
To: [Invitations](#)
Subject: Invitation to Comment SP20-06: Unlawful Detainers: New Forms to Implement Assembly Bill 3088
Date: Wednesday, September 16, 2020 5:38:56 PM
Attachments: [INVITATION TO COMMENTSP20-06 - UDAB3088.docx](#)

Hello,

Attached to this e-mail, please find the Superior Court of California, County of San Diego's responses to the Judicial Council's Invitation to Comment on Item Number: SP20-06 - "Unlawful Detainers: New Forms to Implement Assembly Bill 3088." The responses were compiled from comments made by this court's supervisors, managers, staff attorneys and/or executive staff. Individual judges from our court may be commenting separately. Let me know if you have any questions or would like clarification on anything contained in the court's responses.

Thank you,

Rosy Stolor Meyerowitz
Managing Attorney
Legal Services Division
San Diego Superior Court
Tel: (619) 844-2758

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Item SP 20-06: Response Form

TITLE

**Unlawful Detainers:
New Forms to Implement Assembly Bill 3088**

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

UD-101

General Comments

The form is extremely thorough with listing multiple different UD scenarios in one form. The court is concerned that pro per litigants may have a very difficult time following the form due to its all-encompassing and complex nature. The court gets numerous pro per litigants in UD. The court understands that CCP 1179.01.5 allows the judicial council to create a mandatory cover sheet, which contains the language listed in subdivision (c)(2) of the statute, which reads as follows:

“UNLAWFUL DETAINER SUPPLEMENTAL COVER SHEET

1. This action seeks possession of real property that is:

a. [] Residential

b. [] Commercial

2. (Complete only if paragraph 1(a) is checked) This action is based, in whole or in part, on an alleged default in payment of rent or other charges.

a. [] Yes

b. [] No

Date: _____

(CCP 1179.01.5(c)(4).)

The court would ask that, if a mandatory form is created, that it be a cover sheet only with the language mandated in CCP 1179.01.5(c)(4). And, the remaining information/language outlined in UD-101 be incorporated into a separate “Supplemental Allegations” form that is permissive.

Item/Paragraph Specific Comments

Item 3: If the box “No” is checked, there may need to be some language to direct the litigant to skip subsequent questions.

Items 1 and 10 (b)(2): Contain inconsistent capitalization (Complaint vs. complaint)

Item 6d (1) & (2): CCP 1179.03, subdivision (b), may need to be referenced in addition to subdivision (e), as subdivision (b) states the requirements for this notice and delivery of declaration of COVID-19 related financial distress by tenant.

Item 6d (3): CCP 1179.02(c) may need to be changed to 1179.02.5(c), as this is the section that deals with high-income tenants.

Item 7: Service of Notice from State of California – “complete only if item 6a is checked.” However, Item 7c must be checked if 6b is checked, so stating all of Item 7 must be completed only if 6a is checked could be confusing. Perhaps “complete only if item 6a is checked” can be moved to follow Item 7a. Another alternative is for “complete only if item 6a is checked” be changed to “complete only if item 6 is checked.”

Item 7: Item 7d requires proof of service of the notice in 6a to be attached. 7c requires “information about service of notice” on defendants to be stated in Attachment 7c, but does not expressly require proof of service of the notice in 6b to be attached. It is recommended that 7c be modified to state that proofs of service of the notice in 6b are to be attached to this form, so that it is consistent with the requirements for submitting proof of service of the notice in 6a.

Item 8: It might be helpful to clarify that Items 7 and 8 should both be checked and completed on this form, if the action is based, in part, on demands for payment of rent due during both the “protected time period” and the “transition time period.”

Per CCP 1179.03(c)(4), a landlord may require tenant to submit a new declaration form for each rental payment that tenant does not pay that comes due between September 1, 2020, and January 31, 2021. Therefore, there may be more than one notice at issue under Item 8 with different responses by defendant(s). Items 8a and 8b contemplate only one notice.

Item 8b: The form may also want to reference CCP 1179.03, subdivision (c), in addition to subdivision (e), as subdivision (c) states the requirements for this notice and delivery of declaration of COVID-19 related financial distress by tenant.

Item 8b(3): CCP 1179.02(c) may need to be changed to 1179.02.5(c), as this is the correct section that deals with high-income tenants.

Item 9: The reference to CCP 1179.02 should be changed to 1179.02.5, as this is the section that deals with high-income tenants, as follows: “**High-income tenant.** The 15-day notice in item 6c or 8a above identified defendant as a high-income tenant and requested submission of documentation supporting the tenant's claim that tenant had suffered COVID-19 related financial distress. (Code Civ. Proc., § 1179.02.5.)”

Item 9a: Recommended modifications of minor typographical errors: “Plaintiff had proof before serving the notice in 6c or 8a that the tenant has an annual income that is 130% of the median income ~~of~~ for the county in which the rental property is located ~~in~~ and not less than \$100,000.”

Item 9b: It is recommended that CCP 1179.03, subdivisions (b) and (c) also be referenced, in addition to subdivision (e), as subdivisions (b) and (c) state the requirements for this notice and delivery of declaration of COVID-19 related financial distress by tenant.

Item 9c: CCP 1179.02(c) may need to be changed to 1179.02.5(c), as this is the section that deals with high-income tenants.

UD-104:

This cover sheet will assist in signaling to the court that it must set a hearing as required by CCP 1170.03(h).

Recommended modifications of minor typographical errors:

- “Sign the form provided by the landlord, or, if not available, defendant my sign the declaration in form UD-104(A). Attach the ~~signed~~ signed declaration to the form.”

The Cover Sheet states defendant must serve the form. What method(s) of service is/are authorized?

UD-104(A):

It will be beneficial for defendants to have the option of filing this Declaration if they misplaced or did not receive one from the landlord. The Declaration complies with the statute, as it contains the written statement required by CCP 1179.02(d).

No additional Comments.

Name: Mike Roddy **Title:** Executive Officer

Organization: Superior Court of California, County of San Diego

Commenting on behalf of an organization

Address: Central Courthouse, 1100 Union Street

City, State, Zip: San Diego, California 92101

Sent To:

Email: invitations@jud.ca.gov
Mail: **Judicial Council of California**
Attn: Invitations to Comment
455 Golden Gate Avenue
San Francisco, CA 94102

DEADLINE FOR COMMENT: 12:00 p.m., Thursday, September 17, 2019.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Wednesday, September 16, 2020 8:19:09 PM

Proposal: SP20-06
Position: Agree if modified
Name: Julie Nicola
Title: Civil Operations Manager
Organization: Santa Barbara County Superior Court
Comment on Behalf of Org.: Yes
Address: 312-C East Cook Street
City, State, Zip: Santa Maria CA, 93454
Telephone: 8056146407
Email: jnicola@sbcourts.org
COMMENT:

The proposed forms are more complicated than they should be, especially for self-represented litigants. They should be basic and simple to use. The complaint is where the required information belongs.

The proposed UD-101 is too long and should NOT be for mandatory use. Courts should be able to develop their own UD cover sheet in the form purs. to CCP 1179.01.5(c)(2) and add other items they deem necessary. A supplemental cover sheet should be just that, a sheet, not a 4 page document that litigants and court staff have to navigate, and cross check with the complaint. In our court the Civil Case Cover Sheet is required, we have a local Addendum Cover Sheet to determine the correct courthouse location for filing, and the UD-101 will be the third cover sheet for UD cases. Several of the items on the UD-101 are already included in the UD-100, e.g. the type of notice served and method of service, which are also required to be attached to the complaint, thus the court can see what type of notice was served and whether it contained the Notice from the State of CA; Information about just-cause eviction is included in the UD-100 and stated in the notice, which is attached to the complaint.

UD-101 should contain the information in CCP 1179.01.5(c)(2), and at most, a check box for: whether or not the tenant was provided with the state notice(CCP 1179.04) with proof of service (POS) attached; the unsigned declaration of financial distress and how to return it, with POS attached.

The UD-104 is not necessary. It seems like the form is used to educate the defendant rather than provide the information. An INFO form would be better suited for that purpose. The Declaration should be a stand alone document with the reason the defendant did not deliver the signed declaration to the landlord within the time period included.

TCPJAC/CEAC Joint Rules Subcommittee Special Cycle Comments

The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).

SP20-06 Unlawful Detainers: New Forms to Implement AB 3088

JRS Position: Agree with proposed changes if modified.

The JRS notes the following impact to court operations:

- Significant fiscal impact.
- Results in additional training, which requires the commitment of staff time and court resources.
- Increases court staff workload.

The JRS notes that AB 3088 in general has significant impact on court resources and will require changes in CMS, procedures, flow of cases, and preparation of cases for courtroom and the court process. The forms, however, will assist in providing a consistent experience to the court user and attempt to navigate the challenging new provisions as set forth in AB 3088. Self-Help and other aids will be required and anticipate a number of defect filings requiring multiple hearings.

Suggested modifications:

Paragraph 10.b.(2)

The citation to CC 1946.2(8)(e) does not exist.

There is a section 1946.2(e)(8) but it does not say what Paragraph 10.b.(2) cites.

Where is the language that “the owner of the property has entered into a contract with a buyer who intends to occupy the property...”? That is unclear.

Paragraph 10.b subparts [(1) and (2)] (the no-fault just causes) may be misleading. It suggests that there are only two “no-fault” just causes. Paragraph 10.b is sufficient by itself, however if examples are given, the code provides four reasons, of which the two most used are conspicuously omitted:

- (A)(i) intent to occupy the residential real property by the owner, or their spouse, domestic partner, children, grandchildren, parents, or grandparents.
- (B) Withdrawal of the residential real property from the rental market.

Overall, Form UD-101 is difficult to follow given the complexity of the new requirements. It is suggested an instructional sheet be generated to provide assistance to the user.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Wednesday, September 16, 2020 6:54:34 PM

Proposal: SP20-06
Position: Agree if modified
Name: Patricia Ann Turnage
Title: Owner/Attorney
Organization: Law Offices of Patricia Turnage
Comment on Behalf of Org.: No
Address: 1260 B Street, Suite 140
City, State, Zip: Hayward CA, 94541
Telephone: 5107276752
Email: pturnagelaw@gmail.com
COMMENT:

I am a landlord tenant attorney who represents both landlords and tenants. I can appreciate the need to give tenants a financial break during Covid, but what about Landlords? They are suffering financially too. I would suggest that for those persons who are back working by December 31, 2020 be required to pay a minimum 50% of the rent going forward each month. It is also my suggestion that tenants be required to provide Landlords with documentation confirming their inability to pay full rent. Landlords who call into my office are complaining that there is no way that they can confirm that the tenants are telling the truth about their inability to pay based on Covid. In my opinion, some tenants have not been as truthful as they should be. They often threaten the Landlords when the landlords suggest that they document their inability to pay. I think the law should be written to show Landlords that their financial condition from Covid is recognized and they, too, are important enough to have some protections written into the proposed law.

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 11:56:59 AM

Proposal: SP20-06
Position: Agree if modified
Name: Rachael Vasquez
Title: Legal Assistant
Organization: Nevada County Superior Court
Comment on Behalf of Org.: No
Address: 201 Church Street
City, State, Zip: Nevada City CA, 95959
Telephone:
Email: rachael.vasquez@nccourt.net

COMMENT:

More pro per friendly identification of time periods on #6 and #8 of the cover sheet. Proposed form UD-101 has it identified as "protected time period" and "transition time period" but only somebody who has actually read the code would know what that means. I would comment it should say "6. Rent due between March 1, 2020 and August 31, 2020 (protected time period)"/8. Rent due between September 1, 2020 and January 31, 2021 (transition time period)" in the bolded area instead, reflecting the same wording style as #5. There are also missing colons on 6(d) (2) & (3), 8(b)(1)-(3).

Proposed form UD-104 may be clearer to pro per litigants broken into two sections, such as: "2. The financial distress declaration was served on the landlord within 15 days in the following manner (specify date and method):"/"3. The financial distress declaration was not served on the landlord within 15 days due to (specify):". There is also an unnecessary space between the word name and the closing parenthesis on #1.

THE LAW FIRM OF

RUZICKA, WALLACE & COUGHLIN, LLP

A LIMITED LIABILITY PARTNERSHIP,
INCLUDING PROFESSIONAL CORPORATIONS*

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RICHARD S. SONTAG
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KIM-THAO T. LE
HENRY H. KIM
STEVEN E. BOLANOS
ARDEN HOANG

September 17, 2020

VIA EMAIL (anne.ronan@jud.ca.gov) and FIRST-CLASS U.S. MAIL

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

RE: Invitation to Comment (SP20-06)
Plaintiff's Mandatory Cover Sheet and Supplemental Allegations –
Unlawful Detainer

Ladies and Gentlemen:

In accordance with the above-referenced Invitation to Comment, we submit the following comment and proposed change for your consideration:

Proposed Change

In paragraph 6.a., strike the words "form titled".

Comment

California Code of Civil Procedure §1179.04 does not require a "form titled". Rather, it requires a specified "notice". In that regard, §1179.04 states:

"(a) On or before September 30, 2020, a landlord shall provide, in at least 12-point font, the following notice to tenants who, as of September 1, 2020, have not paid one or more rental payments that came due during the protected time period:

"NOTICE FROM THE STATE OF CALIFORNIA: The California Legislature has enacted the COVID-19 Tenant Relief Act of 2020 which protects renters who have experienced COVID-19-related financial distress from being evicted for failing to make rental payments due between March 1, 2020, and January 31, 2021 ..."

Anne M. Ronan
Judicial Council of California
September 17, 2020

To comply with this requirement, the California Apartment Association (“CAA”) has created a form titled “Informational Notice of COVID-19 Tenant Relief Act of 2020”, which contains the notice required by, and specifically references, Code of Civil Procedure § 1179.04. Enclosed please find a copy of the CAA notice. Likewise, the Apartment Association of Greater Los Angeles has created a form titled “Notice of COVID-19 Relief Act of 2020”, which contains the notice required by Code of Civil Procedure §1179.04.

Unless the phrase “form titled” is stricken, a plaintiff will be required to verify a complaint, under penalty of perjury, stating that it has served a form titled “Notice from the State of California” when the plaintiff has served a form with a different title. Also, the phrase “form titled” may lead the courts and/or defendants to believe that a notice given in accordance with Code of Civil Procedure §1179.04 is defective unless the form is titled “Notice from the State of California” at the top of the first page.

RUZICKA, WALLACE & COUGHLIN, LLP



Earl R. Wallace, Partner

Encl.

INFORMATIONAL NOTICE OF COVID-19 TENANT RELIEF ACT OF 2020

TO: _____
All Residents (tenants and subtenants) in possession (full name) and all others in possession

of the premises located at:

_____, Unit # (if applicable) _____
(Street Address)

_____, CA _____
(City) (Zip)

You are hereby notified, in accordance with Civil Code Section 1179.04:

NOTICE FROM THE STATE OF CALIFORNIA: The California Legislature has enacted the COVID-19 Tenant Relief Act of 2020 which provides protects renters who have experienced COVID-19-related financial distress from being evicted for failing to make rental payments due between March 1, 2020 and January 31, 2021.

“COVID-19-related financial distress” means any of the following:

1. Loss of income caused by the COVID-19 pandemic.
2. Increased out-of-pocket expenses directly related to performing essential work during the COVID-19 pandemic.
3. Increased expenses directly related to the health impact of the COVID-19 pandemic.
4. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member directly related to the COVID-19 pandemic that limit your ability to earn income.
5. Increased costs for childcare or attending to an elderly, disabled, or sick family member directly related to the COVID-19 pandemic.
6. Other circumstances related to the COVID-19 pandemic that have reduced your income or increased your expenses.

This law gives you the following protections:

1. If you failed to make rental payments due between March 1, 2020, and August 31, 2020, because you had decreased income or increased expenses due to the COVID-19 pandemic, as described above, you cannot be evicted based on this nonpayment.
2. If you are unable to pay rental payments that come due between September 1, 2020, and January 31, 2021, because of decreased income or increased expenses due to the COVID-19 pandemic, as described above, you cannot be evicted if you pay 25 percent of the rental payments missed during that time period on or before January 31, 2021.

You must provide, to your landlord, a declaration under penalty of perjury of your COVID-19-related financial distress attesting to the decreased income or increased expenses due to the COVID-19 pandemic to be protected by the eviction limitations described above. Before your landlord can seek to evict you for failing to make a payment that came due between March 1, 2020, and January 31, 2021, your landlord will be required to give you a 15-day notice that informs you of the amounts owed and includes a blank declaration form you can use to comply with this requirement.

If your landlord has proof of income on file which indicates that your household makes at least 130 percent of the median income for the county where the rental property is located, as published by the Department of Housing and Community Development in the Official State Income Limits for 2020, your landlord may also require you to provide documentation which shows that you have experienced a decrease in income or



increase in expenses due to the COVID-19 pandemic. Your landlord must tell you in the 15-day notice whether your landlord is requiring that documentation. Any form of objectively verifiable documentation that demonstrates the financial impact you have experienced is sufficient, including a letter from your employer, an unemployment insurance record, or medical bills, and may be provided to satisfy the documentation requirement.

It is very important you do not ignore a 15-day notice to pay rent or quit or a notice to perform covenants or quit from your landlord. If you are served with a 15-day notice and do not provide the declaration form to your landlord before the 15-day notice expires, you could be evicted. You could also be evicted beginning February 1, 2021, if you owe rental payments due between September 1, 2020, and January 31, 2021, and you do not pay an amount equal to at least 25 percent of the payments missed for that time period.

For information about legal resources that may be available to you, visit lawhelpca.org.

_____ by _____, _____ Agent for Landlord
Landlord *Individual Signing for Landlord* *Management Co. (If Applicable)*

Date



[For Landlord Use Only]

INFORMATIONAL NOTICE OF COVID-19 TENANT RELIEF ACT OF 2020

Proof of Service

I, the undersigned, being at least 18 years of age, declare that I served this notice, of which this is a true copy, on the _____ day of _____ (month), _____ (year), on the above-mentioned resident(s) in possession, in the manner indicated below.

- BY MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence

Place of Mailing: _____ Date of Mailing: _____

OR

- BY DELIVERING a copy of the Notice to the following resident(s) PERSONALLY: _____
BY LEAVING a copy for each of the above-named resident(s) with a person of suitable age and discretion at the residence or usual place of business of the resident(s), said resident(s) being absent therefrom;
AND MAILING by first class mail on said date a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope, with postage fully prepaid, addressed to the above-named resident(s) at their place of residence.
BY POSTING a copy for each of the above-named resident(s) in a conspicuous place on the property therein described there being no person of suitable age or discretion to be found at any known place of residence or business of said resident(s);
AND MAILING by first class mail on the same day as posted, a copy to each resident by depositing said copies in the United States Mail, in a sealed envelope with postage fully prepaid, addressed to the resident(s) at the place where the property is situated.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and if called as a witness to testify thereto, I could do so competently.

Executed this _____ day of _____ (month), _____ (year), in _____ (city), _____ (state).

Name of Declarant (Print)

(Signature of Declarant)



From: [Madeline Howard](#)
To: [Ronan, Anne](#); [Invitations](#)
Subject: Comment letter on SP20-06 - Proposed forms Implementing AB 3088
Date: Thursday, September 17, 2020 11:17:52 AM
Attachments: [image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[Western Center comment letter re AB 3088 UD forms.pdf](#)

Good morning,

Attached please find Western Center on Law & Poverty's comment letter regarding the proposed Unlawful Detainer forms to implement COVID tenant protections.

Please confirm receipt of this message. Thank you very much.

Sincerely,
Madeline Howard



Madeline Howard (she/her/hers)
Senior Attorney

D 213.235.2628

mhoward@wclp.org www.wclp.org



This message is from Western Center on Law & Poverty and may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail, any attachments and any copies from your system. Thank you for your cooperation.



September 17, 2020

VIA EMAIL: anne.ronan@jud.ca.gov;
invitations@jud.ca.gov

Anne M. Ronan
Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688

Re: SP20-06 - Proposed Forms to Implement Assembly Bill 3088

Dear Chief Justice Cantil-Sakauye and Members of the Judicial Council:

Western Center on Law & Poverty writes in response to the Judicial Council's Invitation to Comment (SP20-06) on proposed forms to implement Assembly Bill 3088. We understand and appreciate that the Judicial Council is required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. This comment letter identifies significant issues, including access to justice and due process concerns. In addition, in order to ensure due process, amendments are required to the Answer form to address the supplemental allegations in proposed form UD-101. The complexity of all of the tenant protections also necessitates clear instructions for court staff and time for adequate training.

1. Incorporation of the Centers for Disease Control and Prevention's Order

As the Judicial Council is aware, the CDC's Order, "Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19" implementing a nationwide eviction moratorium was published the day after our state law, AB 3088. Simultaneously, localities throughout the state have been implementing their own COVID-related tenant protections. Western Center has been working with legal services and other partners across California to educate advocates, community partners, and tenants about this complex web of protections. It is extremely challenging to explain all of the protections with varying timelines, declarations, and requirements in a way that is accessible to everyone.

It is essential that the court process allow tenants a meaningful way to access all of these protections, which are intended to prevent a worsening of the public health crisis through mass evictions. Unfortunately, as explained below, the proposed forms do not allow tenants to meaningfully assert their rights.

The Invitation to Comment and the proposed forms include reference to the CDC Order, which prohibits landlords from taking any steps to evict tenants that have submitted a declaration of

hardship. The only evictions permitted under the CDC Order are those based on specified tenant conduct: health and safety violations, destruction of property, criminal activity, or other lease violations.¹ So the CDC Order is broader in scope than AB 3088 in that it prohibits all no-fault evictions in addition to nonpayment evictions.² The CDC Order also protects tenants with rental debt from before March 1, 2020 from eviction, unlike AB 3088. In addition, the CDC Order protects tenants who lost income for a reason unrelated to COVID. Because the CDC Order creates substantive and procedural rights for tenants, specific suggestions about how to incorporate the CDC Order into the proposed forms are below.

2. Due process concerns

AB 3088 provides that where the landlord files an unlawful detainer for nonpayment of rent for the covered time period, and alleges that the tenant did not return a declaration of financial distress, the tenant may file the declaration of financial distress in court within the time specified in Code of Civil Procedure section 1167. (CCP §1179.03(h)(1).) The statute and proposed form UD-104 are silent as to how this filing interacts with the normal deadline for a responsive pleading. Tenants may complete and submit UD-104, explaining why they did not timely return a declaration of financial distress to the landlord, but if their declaration is rejected for a technical issue or the court finds after the required hearing that the tenant did not meet the Code of Civil Procedure section 473 standard, it is unclear what opportunity the tenant has to file an additional responsive pleading. Tenants should not be required to file an Answer with their declaration of financial distress, because the statute creates a procedure where the declaration functions similarly to a “motion to dismiss”;³ if the declaration is accepted, the case will be dismissed. (CCP § 1179.03(h)(2).) Furthermore, the current Answer forms do not contemplate the additional allegations in UD-101 as discussed below.

In order to preserve tenants’ right to file a responsive pleading, the UD-104 should clearly state in bold letters at the top that, once filed, the clerk will set a hearing pursuant to CCP § 1179.03(h), and that no default may be entered against the tenant. Once a tenant has filed UD-104 or filed a declaration of financial distress, no default should be entered unless and until the court rules against the tenant at the §1179.03(h) hearing *and* the tenant fails to file a responsive

¹ The CDC Order specifically allows eviction only when “based on a tenant, lessee, or resident: (1) Engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).” 85 Feg.Reg. at 55294.

² Footnote 6 of the Invitation to Comment seems to suggest that nonpayment cases may proceed despite AB 3088 because they are technically based on at fault just cause. However, this is a hyper-technical reading of the statute and undermines the entire statutory scheme.

³ Recognizing that state law does not currently allow for motions to dismiss, the procedure created by AB 3088 is different from a demurrer because there is no scenario where the court would allow opportunity for the plaintiff to amend.

pleading following the hearing, within a reasonable amount of time set by the court. Without this safeguard, tenants that are clearly intended to be protected from eviction under AB 3088 could be subject to default before their 1179.03(h) hearing even takes place.

It is also important for the forms to reflect that there is no avenue for a landlord to “cure” if they have not served a blank copy of the declaration of financial distress with the eviction notice. Therefore, any notice served without the required declaration would be deficient under the statute and should not allow for a plaintiff to proceed with an unlawful detainer. However, the Council’s proposal seems to provide such an opportunity where none exists under the statute: “For defendants who no longer have the declaration form served on them by the landlord (*or who did not receive one to begin with*), a declaration form is also included in the proposal (form UD-104(A)), which can be attached to the cover sheet” (emphasis added). The forms should make clear that the *defendant’s* failure to deliver the declaration to the landlord may not bar them from the protections of AB 3088 if the court finds such failure was excusable, but should also make clear that the plaintiff’s failure to provide the declaration in the first instance would bar the action entirely.

3. Inequitable Access to Justice

The Judicial Council has generated two forms: one that enables unlawful detainer plaintiffs to make all the required allegations necessary to evict a tenant under the new laws by checking boxes (proposed form UD-101), and on the other side, UD-104, a simple form declaration for defendants that imposes an additional burden that is not required by the state statute. The imbalance created raises fairness and access to justice concerns.

AB 3088 creates a new requirement for unlawful detainer filings. A plaintiff must file a cover sheet that identifies whether the subject of the unlawful detainer is a residential or a commercial property, and identify whether the action is based in whole or in part on an alleged default in rent or other charges. The Legislature states that the Judicial Council may develop a form for the cover sheet for mandatory use. (CCP §1179.01.5(C).)

The proposed form UD-101 includes the cover sheet information required under section 1179.01.5 and then goes far beyond that. Proposed form UD-101 guides a plaintiff in making supplemental allegations with a series of check boxes to indicate that the plaintiff has complied with new state law requirements. In contrast, tenants have no similar opportunity to assert defenses conferred by AB 3088 or the CDC Order because there are no corresponding amendments to the Answer form or in proposed UD-104. Given the extreme financial hardship tenants are facing, and assuming that tenants with COVID-related financial distress began accruing COVID-related rental debt in March, the majority of cases filed will demand large amounts of unpaid rent, making a general denial impermissible. Tenants proceeding in *pro se* require the opportunity to contest supplemental allegations with check boxes that are at least as straightforward as proposed form UD-101 is for plaintiffs. This requires amending the Answer form.

3. Plaintiff's Cover Sheet and Supplemental Allegations (UD-101)

UD-101 subpart #4 includes check boxes for the landlord to state whether the tenant provided a CDC declaration. However, there are no subsequent instructions for the court. Given that the CDC order includes penalties and criminal liability for those who proceed with eviction despite receipt of a CDC declaration, the form should clearly state that an unlawful detainer will not be accepted for filing if the tenant has submitted a CDC declaration unless it is filed on a permitted basis.

The form should specify that an unlawful detainer based on 1) nonpayment of rent for any time period or 2) any no-fault grounds may not proceed against a tenant that has submitted a CDC declaration. There should be similar clear instructions for clerks that where a tenant was not served with a declaration of financial distress under AB 3088, or timely returned a declaration of financial distress, the case should not proceed. This is another area where training for clerks will be absolutely essential to protect tenants' rights.

To facilitate tenants' ability to respond, the instructions should require the landlord to serve a UD-104 and attachment on the tenant with the complaint. In addition, several items on the form require clarification:

- Number 6(d)(3) is confusing as to who is making the request for submission of documentation. The same confusing language appears at 8(b)(3).
- Number 8(c) contains a typo and should refer to January 2021.
- Subpart 10(a) should specify that it refers to at fault just cause other than nonpayment of rent.
- Subpart 10(b) should be amended to reflect that no fault just cause evictions are not permitted for tenants who have submitted a CDC declaration.

Finally, given the potential liability to landlords that proceed with eviction despite receipt of a CDC declaration, the cover sheet should alert plaintiffs to potential civil and criminal penalties for violation of these protections.

4. Defendant's cover sheet (UD-104)

We recommend that this be an optional form rather than a mandatory form, and that it only be filed with the court, not served on the plaintiff. Defendants submitting a declaration without the cover sheet could be prompted to enter the case number from the summons to allow the court to process the form and set the required hearing or provided with a blank form. Tenants who do not have the cover sheet and are trying to meet the extremely short deadline in CCP §1167 to submit their declaration should not be turned away. As discussed above, we also recommend that the form contain bold language instructing clerks that no default may be entered once the form is filed.

AB 3088 only requires that the declaration of financial distress be filed with the court, it does not require service. CCP §1179.03(h). The statute provides that the court gives notice to the plaintiff. *Id.* Due to the overwhelming number of tenants who will be facing eviction, an even greater number than usual will have to proceed in pro se. Requiring an additional form for tenants to

complete and serve in an already complicated process will create an unnecessary barrier to justice, particularly for tenants with limited English proficiency, with disabilities, or other challenges. During a pandemic when service is more challenging, it will be a significant hurdle for pro se tenants struggling with this complex process.

The language of the instructions on the form should be edited to clearly explain the tenants' rights in simple language. In addition, the language at paragraph 2 of UD-104 is confusing. It says "Defendant's response to plaintiff's assertion that defendant did not return the signed declaration to the landlord within the time required in the notice..." Instead, the form should include several check boxes allowing the tenant to assert that 1) the landlord did not give the tenant the 15-day notice or the blank declaration, 2) the tenant did give the landlord the AB 3088 declaration of financial distress, and 3) the tenant gave the landlord a declaration of financial hardship pursuant to the CDC Order. The form should also allow the tenant to allege that they are protected by a local ordinance prohibiting eviction, with a space for the tenant to explain.

There should be an additional checkbox allowing the tenant to provide an explanation if they did not return either declaration with simple language such as "If you did not give your landlord a signed declaration of COVID-19 related financial hardship within 15 days, please explain why here."

The form should not request or require tenants to submit an English copy of the declaration. CCP §1179.03(d) requires landlords to provide translated copies of declarations to tenants.

The form should alert tenants to the possibility of other protections under the CDC order and local laws. It should advise tenants to seek legal advice through lawhelpca.org, and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. Since the CDC order does not impose any deadline for submission of the CDC declaration, a tenant facing an unlawful detainer who qualifies for CDC protection can stop the unlawful detainer upon submission of the CDC form without the necessity of a hearing.

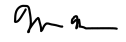
Because people with disabilities may face additional barriers to timely assertion of their rights during the pandemic, please add an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the process including post judgment. 2 C.C.R. §12176.

5. Conclusion

There is no doubt that the complexities of the new tenant protection laws will place unrepresented tenants at an incredible disadvantage if faced with an eviction. We are deeply concerned about access to justice for individuals and families who receive an unlawful detainer and cannot access legal aid. These households will be left to navigate this confusing web of policies on their own, at a time when many courts require litigants to use technology to participate in hearings, and those with health concerns are unable to leave their homes at all let alone visit a crowded courthouse. The result will be exactly what AB 3088 and the CDC order intended to avoid - a landslide of evictions among low-income tenants. At minimum we request that the Judicial Council make the amendments we describe above, and allow adequate time for court staff to be trained on the new protections.

Thank you for your work in implementing these new laws, and thank you for considering these comments. If you have any questions, please feel free to contact me at mhoward@wclp.org.

Sincerely,



Madeline Howard
Senior Attorney

From: invitations@jud.ca.gov
To: [Invitations](#)
Subject: Invitation to Comment: SP20-06
Date: Tuesday, September 15, 2020 11:39:52 AM

Proposal: SP20-06
Position: Agree if modified
Name: Aimee Williams
Title: Associate Attorney
Organization: Castelblanco Law Group APLC
Comment on Behalf of Org.: No
Address: 10944 Ventura Blvd
City, State, Zip: Studio City CA , 90043
Telephone: 213-388-6004
Email: aw@castelblancolaw.com
COMMENT:

I'm a tenant lawyer and I represent tenants in Los Angeles. Making the 104 form mandatory is a mistake.

This mandatory form is difficult to understand, and it may force tenants to waive rights and defenses. For example, the form is structured for the idea that the Plaintiff correctly serves the Declaration and notice, and that the tenant does not respond. Failure to serve the COVID declaration is itself a defense but the Cover Sheet 104 does leave room for the possibility that the tenant was not served the form itself - there are no check boxes for 'was not served' or 'was served incorrectly' and it just goes straight to 'mistake, neglect of tenant.' How does this sit with the court's usual presumption that if you don't raise a defense you waive it? And the tenant is asked to verify this under penalty of perjury.

Like other judicial council forms for tenants requiring tenants to fill out this form in order to gain protections does not account for the reality of the UD civil process in California, wherein the UD Plaintiffs bar is usually trying to get a tenant to default. The large % of defaults and the difficulty of having a default set aside in UD court versus regular civil court is common knowledge. I understand that the Judicial Council cannot (and should not) take this into account in drafting the forms, but I ask you to please consider how the structure of the form frames the argument and procedure to the detriment of tenants.

I understand the need for a mandatory form - I do not agree that it should be mandatory given the myriad different defenses and laws available to a tenant at local and federal levels- and the different levels of COVID hardship that every jurisdiction requires a tenant to testify to in order to be protected. For instance, signing this form would get you state protections, but it does not meet the level for CDC order protections or the protections in some local jurisdictions in LA County.

Tenant advocates are working to develop forms and declarations that raise as many defenses as possible from the different federal, state and local laws. This form is good and it serves a purpose, but making it MANDATORY creates another hurdle for tenants.

It would be possible for the court or judicial council to create guidelines or basic criteria for any such declaration to meet that clerks could use to assess whether the declaration form is sufficient to stop or divert the UD process. Clerks are in a better position than tenants, laypersons, to make basic assessment of whether a form is compliant versus whether signing the form would waive valid defenses and rights. Again, this seems to be a case of the state placing the burden on the class of people least able to handle it - tenants and working class people.

Also, by failing to consider the many possibilities of misuse by UD Plaintiffs, it assumes that the playing field is neutral, and fails to take account for the reality that the UD court system being manipulated towards defaulting tenant litigants AND the vast access to justice gap for tenants.

Please note that Judicial Council and court forms where its easy or even expected for tenants to waive defenses is not novel, its a regular occurrence. A few examples: In Los Angeles the court stipulation for UD Judgement has a

simple check box where the tenants waives their right to a lawyer and future hearing upon future default - this is only for the tenant, not the landlord, and that kind of one sided waiver and renunciation of due process rights and representation that doesn't happen ANYWHERE ELSE in our civil justice system. Nowhere on the stipulation form or the UD 105 form does it provide for the court case to be masked, essentially guaranteeing that a tenants credit and ability to get future housing will be detrimentally affected. In the Judicial Council Answer Form there is no place to assert their right to a jury trial, though that is a right in California. Until the new form on September 1 (thank you for the updated form), it left out many defenses and even as of the September 1 form, it provides breach of warranty of habitability as a defense ONLY to nonpayment of rent, which is inconsistent with case law that states that habitability is still a defense any time the landlord claims rental damages.

Despite California being a state where Fair Housing laws predated federal Fair Housing laws, and the current housing crisis which predominately affects communities of color, there are only minimal references to discrimination defenses or reasonable accommodation defenses in any of the UD forms for Defendants, for example the UD Form Rgs 106 form does not substantially address discrimination, despite 77.0 having a section supposedly dedicated to it.

I point out these examples to illustrate that the Judicial Council, unfortunately, does not have a good history of providing a level playing field for tenants/UD defendants through their forms. I ask you to please consider this and consider your own biases and assumptions about the rights of tenants to a robust defense in drafting these forms because it matters. The courts own forms waiving tenant defense or assuming a certain level of guilt, or not providing basic procedural rights and protections and sealing of court records all contribute to the situation we presently find ourselves in, a housing and homelessness crisis with a huge access to justice gap for tenants. The courts did not cause the homelessness crisis, but the least that you could do is not contribute to it by ill-considered forms that make things harder for the advocates and tenants trying to fight it and keep people in their homes during a pandemic.

We are all working hard during these difficult times and the Judicial Council has done great work translating messy state laws into these forms in a remarkably short time, but I ask you to use this as a starting point to examine how tenants are disadvantaged by the language of these and other forms. Housing justice and homelessness is a defining issue in our society, and our justice system should be more critical of ways they may contribute to that.

For example, currently the courts send out a letter advising tenants of the filing of an unlawful detainer (though with the mail being slow the efficacy of this is in question) Should the COVID declaration be included with that notice?

To recap:

Please don't make the form mandatory, only suggested.

Please make it more straightforward for tenants to assert that the landlord did not serve them the COVID declaration rather than guiding tenants straight to testifying about their own 'mistake or neglect'

Please make the form straightforward and provide a line that filing this declaration is not intended to waive any other defenses available at federal or local levels.