



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-161

For business meeting on: September 20, 2022

Title

Civil Law and Family Law: Request to Enter
Default Forms Under the Servicemembers
Civil Relief Act

Rules, Forms, Standards, or Statutes Affected

Revise forms CIV-100, CIV-105, FL-130,
FL-130(A), FL-165, and FL-620

Recommended by

Civil and Small Claims Advisory
Committee

Hon. Tamara L. Wood, Chair

Family and Juvenile Law Advisory
Committee

Hon. Stephanie E. Hulsey, Cochair

Hon. Amy M. Pellman, Cochair

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Date of Report

August 24, 2022

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Executive Summary

The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee jointly propose that the Judicial Council revise six forms so that they comply with the Servicemembers Civil Relief Act (SCRA) and reflect the act's current title and legal citation. The revisions are intended to address concerns by courts that the forms are noncompliant with the act because they do not include a declaration as to how the petitioner/plaintiff determined the respondent's/defendant's nonmilitary status before requesting default judgment, and to make other minor technical revisions as appropriate. The joint proposal seeks to ensure that the declarations of nonmilitary status on civil and family law forms are consistent to the extent appropriate.

Recommendation

The Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee jointly recommend that the Judicial Council, effective January 1, 2023:

1. Revise the declaration of nonmilitary status in the following forms to (1) comply with section 3931(b) of the Servicemembers Civil Relief Act (SCRA) by providing a way for the petitioner/plaintiff to state facts necessary to support a declaration regarding the nonresponding party's nonmilitary status, and (2) include information that may help the petitioner/plaintiff determine the nonresponding party's military status and how to proceed depending on that determination:
 - Item 8 of *Request for Entry of Default* (form CIV-100);
 - Item 9 of *Request for Entry of Default* (form CIV-105);
 - Item 5 of *Request to Enter Default* (form FL-165); and
 - Item 3 of *Request to Enter Default Judgment* (form FL-620).

2. Revise the following forms to update the title and citation of the SCRA:
 - *Appearance, Stipulations, and Waivers* (form FL-130); and
 - *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)).

The revised forms are attached at pages 13–23.

Relevant Previous Council Action

Request for Entry of Default (form CIV-100)

The Judicial Council adopted the precursor to form CIV-100 on July 1, 1971. In 2005, the form was revised to, among other things, reflect federal legislation renaming the Soldiers' and Sailors' Civil Relief Act of 1940 (the law on which the declaration of nonmilitary status is based) to the SCRA. The form was renumbered in 2007 and revised in 2017 in part to include the state law definition of military service in the declaration of nonmilitary status. In 2020, technical revisions were made to update statutory citations in the form's nonmilitary status declaration.

Request for Entry of Default (form CIV-105)

The Judicial Council adopted form CIV-105 effective January 1, 2018. In 2020, technical revisions were made to update statutory citations in the form's nonmilitary status declaration.

Appearance, Stipulations, and Waivers (form FL-130) and Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003 (form FL-130(A))

The Judicial Council previously revised form FL-130, effective January 1, 2006, by updating the title of the federal act formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940 to the SCRA. Effective January 1, 2010, the Judicial Council revised form FL-130 to update the title of the SCRA and reference new form FL-130(A). The council approved form FL-130(A) for use by a servicemember-respondent to request that the court enter a stipulated judgment or marital settlement agreement while the servicemember is on active duty.

Request to Enter Default (form FL-165) and Request to Enter Default Judgment (form FL-620)

Effective January 1, 2005, the Judicial Council revised forms FL-165 and FL-620 by including a reference to the SCRA, which had replaced the Soldiers' and Sailors' Civil Relief Act of 1940.

Analysis/Rationale

The SCRA, codified at 50 U.S.C. §§ 3901–4043, is a federal law that provides rights and protections for members of the U.S. military on active duty. In California, similar protections are afforded to persons in military service as defined by section 402(f) of the California Military and Veterans Code. Section 3931 of the SCRA protects servicemembers against default judgments in any civil action, including child custody proceedings, in which the defendant/respondent does not make an appearance. In pertinent part, section 3931(b)(1) provides that:

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or
- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

Section 3931(b)(4) further specifies that “[t]he requirement for an affidavit under paragraph (1) may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury.”

Declaration under SCRA section 3931(b)

Each request-to-enter-default form currently includes a declaration of nonmilitary status comprised of a short statement by the petitioner/plaintiff declaring that the respondent/defendant is not in military service and, therefore, is not entitled to the benefits of the SCRA. However, none of the existing default forms provides a way for the petitioner/plaintiff to show necessary facts to support the declaration of nonmilitary status

(i.e., how the petitioner/plaintiff knows that the nonresponding party is *not* in military service), as required by section 3931(b)(1)(A) of the SCRA.

To comply with the statute, the committees recommend that the Judicial Council revise:

- Item 8 of *Request for Entry of Default* (form CIV-100);
- Item 9 of *Request for Entry of Default* (form CIV-105);
- Item 5 of *Request to Enter Default* (form FL-165); and
- Item 3 of *Request to Enter Default Judgment* (form FL-620).

As circulated for public comment, the proposal was to replace the language in each item with the following (with the appropriate reference to either named “defendant” for civil forms or “respondent” for family law forms):

Declaration of nonmilitary status (required for a judgment).
The respondent/defendant is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).
I know that respondent/defendant is not in the U.S. military service because (specify below):

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the respondent/defendant is in the military service, or their military status is unknown, the respondent/defendant is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see [\[insert link to a page on the self-help website, which is being developed\]](#).

As noted above, the committees also proposed that each form include information that could help the petitioner/plaintiff answer the question about the nonresponding party’s military status. The new “Note” box would include a link to the search engine maintained by the U.S. Secretary of Defense, Defense Manpower Data Center, which can be used to check a person’s military status if some basic information is known, such as their date of birth or social security number.¹ In addition, the box would include a link to new self-help online content on the California Courts website that would:

- Contain information intended to help a party understand how to obtain a default judgment if the nonresponding party is in U.S. military service or their military status is unknown;
- Explain how to use the federal government search engine to find out military status; and
- Explain how the federal and state codes define military service.

¹ See <https://scra.dmdc.osd.mil/scra/#/home>.

As discussed further in the comments section of this report, in response to concerns raised in public comments regarding the proposal, the committees recommend changes to proposed revisions to the declaration of nonmilitary status in forms CIV-100, CIV-105, FL-165, and FL-620. The recommended changes are better suited to the purpose of each form and are intended to better reflect how parties in civil, family, and governmental child support cases use them.

Update title and citation to SCRA

The committees also recommend revising the following two forms to reflect the current title and citation of the SCRA: *Appearance, Stipulations, and Waivers* (form FL-130) and *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)).

Policy implications

Because the proposal is intended only to conform the forms to federal law, provide additional information that may be helpful to litigants in completing the forms, and update citations, no policy implications were identified that contributed to significant controversy or intense debate within the committees about the proposal.

Comments

The invitation to comment was circulated for public comment from April 1, 2022, to May 13, 2022, as part of the regular spring comment cycle. The committees received a total of nine comments. Three commenters—the Superior Courts of Los Angeles and San Diego Counties and the Orange County Bar Association (OCBA)—agreed with the proposal as circulated. Four commenters—the California Department of Child Support Services (DCSS), the Harriet Buhai Center for Family Law (HBCFL), Judge Christine Donovan of the Superior Court of Solano County, and the Superior Court of San Bernardino County—did not specifically indicate a position but suggested changes and/or responded to specific questions from the committees. One commenter, the California Partnership to End Domestic Violence (CPEDV), agreed with the proposal if modified in the manner proposed in its comments. Another commenter, the Family Violence Appellate Project (FVAP), joined in CPEDV’s comments without elaboration.

The Civil and Small Claims and Family and Juvenile Law Advisory Committees reviewed all of the public comments. A chart with the full text of the comments received and the committees’ responses is attached at pages 24–39. The main comments and the committees’ responses thereto are discussed below.

Comments relating to proposed revisions to the declaration of nonmilitary status

Several commenters expressed concern about the proposal to add open-ended blank space to the nonmilitary status declaration in each form that would require litigants to provide necessary facts as to how they know that the respondent/defendant is not in the military. For example:

- CPEDV commented that, while the proposal solves the issue of providing space for a litigant to provide necessary facts supporting a declaration of nonmilitary status, some litigants might leave the space blank for fear of being asked to “prove a negative.”
- FVAP joined in CPEDV’s comments without further comment.
- HBCFL also was concerned that the space being added for a petitioner to state necessary facts to support a declaration of nonmilitary status could be seen as requiring litigants to “prove a negative” without providing examples of what would constitute a sufficient factual showing. Further, HBCFL expressed concern that the open-ended nature of the provided space might invite the legal interpretation of a statute by clerks processing default judgment forms, and the commenter questioned whether judicial review of the forms would be available.
- Additionally, specific to the FL-620, DCSS expressed concern that, while the proposed changes would “address the gap in providing specific facts to support the declaration of non-military status,” the proposed method of doing so—open-ended blank space for the petitioner/plaintiff to provide an explanation—would impact statewide uniformity and significantly increase the workload of local child support agencies completing the form. DCSS added that the agencies’ mandatory investigative process currently allows them to automatically generate a form FL-620 when certain criteria, including a determination of nonmilitary status, are met. DCSS estimated that revising the form to require an individual explanation of necessary facts in each case would require an additional 729 hours of caseworker time annually.

To address their concerns about the open-ended space to provide facts to support the declaration of nonmilitary status, commenters suggested the following changes:

- HBCFL suggested adding check boxes to form FL-165 containing “statements that would each individually constitute sufficient facts for purposes of showing non-military status” such as (1) “Respondent’s name does not appear on <https://scra.dmdc.osd.mil/>,” (2) “I am in routine contact with Respondent and they are not in the U.S. military service,” or (3) “Respondent is not eligible for military service.”²
- CPEDV suggested adding a response of “other” to the relevant item of each form.
- DCSS submitted suggestions specific to form FL-620 that would help simplify the process for local child support agencies to complete it. They suggested including a check box affirming that “[t]he Child Support Enforcement System has no evidence of active military duty (for use by IV-D agencies only).” DCSS also recommended

² HBCFL also suggested amending rule 5.402 to address the procedure when one of these boxes is or is not checked, and revising form FL-165 to allow for default of a third party, including a specific item to indicate date of service. The committees decided not to include these changes among the recommendations being made to the Judicial Council, as they are outside the scope of the proposal as it relates to the SCRA.

that form FL-165 be revised to include the same change, as it is sometimes used by local child support agencies.

Similarly, other commenters suggested ways to revise the declaration of nonmilitary status on the forms.

- Judge Donovan of the Superior Court of Solano County suggested that forms FL-165 and FL-620 be further revised to include check boxes indicating that (1) the respondent is not in the military as verified by checking the federal website, (2) the respondent is in the military but has signed a stipulation and limited waiver of rights on form FL-130(A), or (3) the respondent is in the military and the petitioner requests appointment of counsel for the respondent.
- To address the stated purpose of the proposal, the Superior Court of San Bernardino County commented that the forms should provide space for a litigant to state that they are unable to determine whether or not the nonresponding party is in the military.

Finally, the committees received one comment about the information in the “Note” box below the declaration of nonmilitary status. HBCFL stated that:

“Listing the website (<https://scra.dmdc.osd.mil/>) in the note box implies that the expected way to show military status is by using the website. The website is only available in English. The user guide offered by the site is also only available in English and is 54 pages long. Using the site requires setting up an account (again only available in English). The technology and language both present a barrier to pro per litigants. And unlike some otherwise burdensome but relatively rare processes, like service by posting, this step is *required* in every default case.

Although a self-help website that provides more information on the topic would be welcome, it still does not address our concern that the form itself should provide some indication of what would be required under the law without requiring the use of technology.”

After considering these comments and suggested revisions, the committees decided *not* to recommend the proposed revisions to the declaration of nonmilitary status in the forms that were circulated for comment. The committees agreed with commenters that the declarations in the forms should provide further clarity for litigants to avoid the possibility of them leaving the item blank due to uncertainty over how to respond or fear of being asked to “prove a negative.” The committees determined that modifying the declaration of nonmilitary status to include check boxes would be a beneficial change that could avoid confusion, provide needed clarity for litigants, and avoid the implication that a party is required to show the court results from a specific website to proceed with their case.

However, the committees decided that it would not be beneficial to add check boxes to any of the existing default judgment forms affirming that a respondent/defendant *is* in the service of the U.S. military or the declarant is *unable to determine* military status, as doing so could cause confusion for litigants and court staff and would significantly alter existing processes for the approval of requests for default judgments. Instead, the committees determined that these changes would be more appropriately considered as part of a potential future proposal for other, additional SCRA-related rules and forms.

Based on the foregoing, the committees recommend that:

1. The declaration of nonmilitary status in each form have a series of check boxes containing statements that could, individually, constitute sufficient facts for purposes of showing nonmilitary status.
2. The check boxes included in the declaration of nonmilitary status of each form be tailored, as appropriate, to the type of proceeding in which the form is used.
3. Each form include an identical “Note” box below the declaration of nonmilitary status to provide information and resources that may help the petitioner/plaintiff determine the nonresponding party’s military status and appropriate next steps depending on that status. The content of this new box does not differ greatly from the original proposal, except that the third item (see page 4 of this report) will include the link to the California Courts Self-Help portal that contains information and resources for SCRA-related cases.

The committees made specific recommendations about the content of the check box statements to include on the different types of forms, as described in the next sections.

Forms CIV-100 and CIV-105

Although no comments were received specific to the civil forms, the concerns raised in the comments about the open-ended nature of the blank space included in the revised forms as circulated (and the possibility of litigants seeing it as a request to “prove a negative”) are applicable to the civil forms as well as the family law forms. Therefore, the committees recommend that the declaration of nonmilitary status in forms CIV-100 (item 8) and CIV-105 (item 9) be revised as follows:

8. **Declaration of nonmilitary status** (*required for a judgment*).
No defendant/respondent named in item 1c is in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that no defendant/respondent named in item 1c is in the U.S. military service because (*check all that apply*):

a. the search results that I received from <https://scra.dmdc.osd.mil/> say the defendant/respondent is not in the U.S. military service.

b. I am in regular communication with the defendant/respondent and know that they are not in the U.S. military service.

c. I recently contacted the defendant/respondent, and they told me that they are not in the U.S. military service.

d. I know that the defendant/respondent was discharged from U.S. military service on or about (*date*):

e. the defendant/respondent is not eligible to serve in the U.S. military because they are:
 incarcerated a business entity

f. other (*specify*):

Forms FL-165 and FL-620

The committees recommend the following changes to the declaration of a respondent's nonmilitary status in item 5 on form FL-165:

5. **Declaration of nonmilitary status** *(required for a judgment)*.
The respondent is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that the respondent is not in the U.S. military service because *(check all that apply)*:

(a) the search results that I received from <https://scra.dmdc.osd.mil/> say the respondent is not in the U.S. military service.

(b) I am in regular communication with the respondent and know that they are not in the U.S. military service.

(c) I recently contacted the respondent, and they told me that they are not in the U.S. military service.

(d) I know that the respondent was discharged from U.S. military service on or about *(date)*:

(e) the respondent is not eligible to serve in the U.S. military because they are incarcerated (in jail or prison).

(f) other *(specify)*:

Further, the committees recommend that the declaration of nonmilitary status on form FL-620 (item 3) of a respondent/defendant in a governmental child support case be revised as follows:

3. **Declaration of nonmilitary status** *(required for a judgment)*.
The respondent/defendant is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that respondent/defendant is not in the U.S. military service because *(specify below)*:

(a) the military status of the respondent/defendant was checked online at <https://scra.dmdc.osd.mil/>.

(b) the Child Support Enforcement System has no evidence of active military duty status for the respondent/defendant.

(c) other *(specify)*:

As illustrated above, the recommended changes to the declaration of nonmilitary status in form FL-620 differ significantly from the recommendations for form FL-165. The committees agreed to incorporate DCSS's suggestions that the governmental form provide a standardized way for local child support agencies to accurately and efficiently complete the declaration of nonmilitary status. Thus, the number of check boxes is reduced and option (b) includes a general statement that the Child Support Enforcement System has no evidence of active military duty status for the respondent.

Other forms: FL-130 and form FL-130(A)

The committees received no comments objecting to their proposal to update the current title and citation of the SCRA in *Appearance, Stipulations, and Waivers* (form FL-130) and *Declaration and Conditional Waiver of Rights Under the Servicemembers Civil Relief Act of 2003* (form FL-130(A)). After further review, the committees determined that no further changes to the forms are required to address the stated purpose of the proposal.

Comments relating to the development of additional forms

In the invitation to comment, the committees asked whether it would be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel

and other requirements under the SCRA when a respondent/defendant is in the U.S. military service or their military status is unknown.

The committees received seven responses to the question. Five commenters agreed that developing a statewide set of forms would be helpful and two did not. Specifically:

- DCSS responded that it may be helpful to develop forms for the circumstance when a respondent/defendant is in the military, such as requesting appointment of counsel or other remedies to obtain a judgment in such cases.
- HBCFL, OCBA, and the Superior Court of San Bernardino County likewise responded that it would be helpful for the council to develop additional forms.
- The Superior Court of San Diego County agreed that additional statewide forms might be helpful if they are optional and courts with their own local forms may continue to use them.
- CPEDV did not see the need for the development of additional forms. FVAP joined in CPEDV's comments without further commentary.

The committees will continue to gather input from stakeholders in the coming year and potentially propose new forms relating to the SCRA in a future rules cycle.

With respect to attorney appointment, the committees note that while both the SCRA and state law require that before default judgment is granted in cases involving active-duty military members, or where the nonresponding party's military status is unknown, counsel be appointed (see 50 U.S.C. § 3931; Mil. & Vet. Code, § 402), neither statute addresses compensation of the appointed attorney. Currently, it appears that neither the courts nor the counties have a legal obligation to pay for counsel appointed pursuant to the SCRA or a funding source to do so. Thus, any such process developed in a future rules and forms proposal would likely require attorneys to volunteer for appointment or for parties to pay the costs.

Comments on other specific questions

The committees sought comment on four other specific questions about the proposal.

- *Does the proposal appropriately address the stated purpose?*
As noted throughout the report, many commenters strongly believed that substantial changes were needed before the proposal would effectively address the stated purpose. Having incorporated many of the commenters' suggestions into the recommended revisions to the civil and family law forms, the committees believe that the recommendations in this report now appropriately address the stated purpose.
- *Will the proposal provide cost savings? If so, please quantify.*
Two commenters responded, without further comment, that the proposal will not provide cost savings.

- *Will three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?*
Three commenters responded to this question. One replied “yes,” without further comment. Another replied, “Yes, if the final versions of the forms are provided to the court by that time. This will ensure that the court is able to provide training to staff, modify local packets and obtain printed stock.” The third believed that the changes will take longer than three months to implement.
- *How well will this proposal work in courts of different sizes?*
Two courts responded. One stated that “[i]t appears that the proposal would work for courts of all sizes.” The other stated that “[s]ize should not have an impact.”
- *What would be the implementation requirements for courts?*
Two courts responded and noted that implementation requirements would likely include updating internal procedures and local packets, as well as informing and training staff.

Alternatives considered

The committees considered whether to revise the forms in the proposal or take no action. To this end, the committees reviewed and considered federal and state law to better understand the responsibilities of courts, parties, and attorneys appointed to represent a nonresponding respondent/defendant on active duty in the U.S. military. The committees concluded that the declaration of nonmilitary status on the forms was insufficient and, therefore, recommended that it be revised to better comply with the requirements of the SCRA.

The committees also considered whether to recommend that that civil and family law forms use identical language for the declaration of nonmilitary status. As circulated for public comment, the committees proposed that the declaration of nonmilitary status in all of the forms be largely identical and provide open-ended space for a petitioner/plaintiff to state how they know that a defendant/respondent is not in the military. This changed following the comment period.

The committees initially considered developing new statewide forms for use in proceedings where the SCRA provides protections, similar to forms used in other jurisdictions,³ such as a form for requesting a default judgment when the nonresponding party *is* in the military or

³ The Alaska courts, for example, use the following forms:

- *Default Application for Divorce, Custody, or Legal Separation* ([form SHC-400](#));
- *Affidavit of Attorney Appointed Under Servicemembers Civil Relief Act* ([form CIV-661](#));
- *Information Sheet for Attorneys Appointed Under the Servicemembers Civil Relief Act* ([form CIV-662](#)); and
- *Information Sheet for Parties Seeking Default Under the Servicemembers Civil Relief Act* ([form CIV-663](#)).

when military status is unknown, However, they determined that such action would go beyond the scope of the current proposal.

Fiscal and Operational Impacts

Based on the comments received from courts and committee discussions, some minimal fiscal and operational impacts are expected, including costs to copy the revised forms and update forms packets and resources needed to educate court professionals about the SCRA requirements. The Superior Court of Los Angeles County commented that “[c]hanges will take longer than 3 months to implement” but did not provide any explanation as to why this might be so. In any event, it appears from the comments that any potential implementation requirements would be relatively minimal and do not present a barrier to adoption of the proposal.

Attachments and Links

1. Forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620, at pages 13–23
2. Chart of comments, at pages 24–39
3. Link A: Servicemembers Civil Relief Act,
<http://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter50&edition=prelim>
4. Link B: Military and Veterans Code sections 400–409.15,
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=MVC&division=2.&title=&part=1.&chapter=7.5.&article=

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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4. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant did did not for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:

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

5. **Declaration under Code Civ. Proc., § 585.5** (for entry of default under Code Civ. Proc., § 585(a)). This action

- a. is is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
- b. is is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
- c. is is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was

- a. **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (*names*):
- b. **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
 - (1) Mailed on (date):
 - (2) To (specify names and addresses shown on the envelopes):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.

Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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7. **Memorandum of costs** (required if money judgment requested). Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$
- b. Process server's fees \$
- c. Other (specify): \$
- d. \$
- e. **TOTAL** \$ _____

- f. Costs and disbursements are waived.
- g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing item 7 is true and correct.

Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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8. **Declaration of nonmilitary status** (required for a judgment).

No defendant/respondent named in item 1c is in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that no defendant/respondent named in item 1c is in the U.S. military service because (check all that apply):

- a. the search results that I received from <https://scra.dmdc.osd.mil/> say the defendant/respondent is not in the U.S. military service.
- b. I am in regular communication with the defendant/respondent and know that they are not in the U.S. military service.
- c. I recently contacted the defendant/respondent, and they told me that they are not in the U.S. military service.
- d. I know that the defendant/respondent was discharged from U.S. military service on or about (date):
- e. the defendant/respondent is not eligible to serve in the U.S. military because they are:
 - incarcerated a business entity
- f. other (specify):

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the defendant/respondent is in the military service, or their military status is unknown, the defendant/respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see <https://selfhelp.courts.ca.gov/military-defaults>.

I declare under penalty of perjury under the laws of the State of California that the foregoing item 8 is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff/Petitioner: Defendant/Respondent:	
REQUEST FOR (Application) <input type="checkbox"/> Entry of Default <input type="checkbox"/> Judgment	CASE NUMBER: _____
For use only in actions under the Fair Debt Buying Practices Act (Civ. Code, § 1788.50 et seq.)	

1. On the complaint or cross-complaint filed
 - a. on (date):
 - b. by (name):
 - c. Enter default of defendant (names):
 - d. I request a judgment under Civil Code section 1788.60 and Code of Civil Procedure section 585 against defendant (names):

(Testimony may be required. Check with the clerk regarding whether a hearing date is needed.)

e. <input type="checkbox"/> Default was previously entered on (date):			
2. Judgment to be entered.	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint*	\$	\$	\$
b. Interest	\$	\$	\$
c. Costs (see page 3)	\$	\$	\$
d. Attorney fees	\$	\$	\$
e. TOTALS	\$	\$	\$

(* Must be established by business records, authenticated through a sworn declaration, submitted with this application. (Civ. Code, §§ 1788.58(a)(4), 1788.60(a).))

3. This action is not barred by the applicable statute of limitations (Civ. Code, § 1788.56).
4. **Requirements for the complaint.**
 - a. The complaint alleges ALL of the following (Civ. Code, §§ 1788.58, 1788.60):
 - (1) That the plaintiff is a debt buyer;
 - (2) A short, plain statement regarding the nature of the underlying debt and the consumer transaction from which it is derived;
 - (3) That the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
 - (4) The debt balance at charge-off and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt;
 - (5) The date of the default OR the date of the last payment;
 - (6) The name and address of the charge-off creditor at the time of charge-off in sufficient form so as to reasonably identify the charge-off creditor, and the charge-off creditor's account number associated with the debt;

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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4. a. (7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt;
- (8) The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer, in sufficient form so as to reasonably identify each such purchaser; and
- (9) That the plaintiff has complied with Civil Code section 1788.52.
- b. A copy of the contract or other document described in Civil Code section 1788.52(b) is attached to the complaint.

5. **Documentation requirements for default judgment.** ALL of the following documents are submitted with this request for default judgment (Civ. Code, § 1788.60(a)–(c)):
 - a. A copy of the contract or other document evidencing the debtor's agreement to the debt, authenticated through a sworn declaration. See Civil Code section 1788.52(b) regarding documentation, including for revolving credit accounts.
 - b. Business records, authenticated through a sworn declaration, to establish:
 - (1) That the plaintiff is EITHER the sole owner of the debt OR has the authority to assert the rights of all owners of the debt;
 - (2) The debt balance at charge-off, and an explanation of the amount and nature of, and reason for, all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt;
 - (3) The date of the default OR the date of the last payment;
 - (4) The name and address of the charge-off creditor at the time of charge-off in sufficient form so as to reasonably identify the charge-off creditor, and the charge-off creditor's account number associated with the debt;
 - (5) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt; and
 - (6) The names and addresses of all persons or entities that purchased the debt after charge-off, including the plaintiff debt buyer, in sufficient form so as to reasonably identify each such purchaser.

Date: _____

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

FOR COURT USE ONLY	(1) <input type="checkbox"/> Default entered as requested on <i>(date)</i> :
	(2) <input type="checkbox"/> Default NOT entered as requested <i>(state reason)</i> :
	Clerk, by _____, Deputy

6. **Legal document assistant or unlawful detainer assistant (Bus. & Prof. Code, § 6400 et seq.).** A legal document assistant or unlawful detainer assistant did did **not** for compensation give advice or assistance with this form. If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer assistant, state:

- | | |
|--|---|
| <ol style="list-style-type: none"> a. Assistant's name: b. Street address, city, and zip code: | <ol style="list-style-type: none"> c. Telephone no.: d. County of registration: e. Registration no.: f. Expires on <i>(date)</i>: |
|--|---|

7. **Declaration under Code Civ. Proc., § 585.5** (for entry of default under Code Civ. Proc., § 585(a)). This action
 - a. is is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
 - b. is is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
 - c. is is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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8. **Declaration of mailing (Code Civ. Proc., § 587).** A copy of this *Request for Entry of Default* was
- a. **not mailed** to the following defendants, whose addresses are unknown to plaintiff or plaintiff's attorney (*names*):
 - b. **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
 - (1) Mailed on (*date*):
 - (2) To (*specify names and addresses shown on the envelopes*):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 6, 7, and 8 are true and correct.

Date: _____

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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9. **Declaration of nonmilitary status (required for a judgment).**
 No defendant/respondent named in item 1c is in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that no defendant/respondent named in item 1c is in the U.S. military service because (*check all that apply*):

- a. the search results that I received from <https://scra.dmdc.osd.mil/> say the defendant/respondent is not in the U.S. military service.
- b. I am in regular communication with the defendant/respondent and know that they are not in the U.S. military service.
- c. I recently contacted the defendant/respondent, and they told me that they are not in the U.S. military service.
- d. I know that the defendant/respondent was discharged from U.S. military service on or about (*date*):
- e. the defendant/respondent is not eligible to serve in the U.S. military because they are:
 - incarcerated a business entity
- f. other (*specify*):

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the defendant/respondent is in the military service, or their military status is unknown, the defendant/respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see <https://selfhelp.courts.ca.gov/military-defaults>.

10. **Memorandum of costs (required if money judgment requested).** Costs and disbursements are as follows (Code Civ. Proc., § 1033.5):
- a. Clerk's filing fees \$
 - b. Process server's fees \$
 - c. Other (*specify*):
 - d. \$
 - e. **TOTAL** \$
 - f. Costs and disbursements are waived.
 - g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing items 9 and 10 are true and correct.

Date: _____

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER: RESPONDENT:	
REQUEST TO ENTER DEFAULT	CASE NUMBER:

1. **To the clerk:** Please enter the default of the respondent who has failed to respond to the petition.
2. A completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155) is attached is not attached.
 A completed *Property Declaration* (form FL-160) is attached is not attached because (check at least one of the following):
 - (a) there have been no changes since the previous filing.
 - (b) the issues subject to disposition by the court in this proceeding are the subject of a written agreement.
 - (c) there are no issues of child, spousal, or partner support or attorney fees and costs subject to determination by the court.
 - (d) the petition does not request money, property, costs, or attorney fees. (Family Code section 2330.5.)
 - (e) there are no issues of division of community property.
 - (f) this is an action to establish parental relationship.

Date: _____

_____ (TYPE OR PRINT NAME) ▶ _____ (SIGNATURE OF [ATTORNEY FOR] PETITIONER)

- 3. Declaration**
- (a) No mailing is required because service was by publication or posting and the address of the respondent remains unknown.
 - (b) A copy of this *Request to Enter Default*, including any attachments and an envelope with sufficient postage, was provided to the court clerk, with the envelope addressed as follows (address of the respondent's attorney or, if none, the respondent's last known address):

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 DECLARANT)

FOR COURT USE ONLY
<input type="checkbox"/> <i>Request to Enter Default</i> mailed to the respondent or the respondent's attorney on (date):
<input type="checkbox"/> Default entered as requested on (date):
<input type="checkbox"/> Default not entered. Reason:
Clerk, by _____, Deputy

PETITIONER: RESPONDENT:	CASE NUMBER:
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4. Memorandum of costs

- a. Costs and disbursements are waived.
- b. Costs and disbursements are listed as follows:
- | | |
|--|-----------------|
| (1) <input type="checkbox"/> Clerk’s fees | \$ |
| (2) <input type="checkbox"/> Process server’s fees | \$ |
| (3) <input type="checkbox"/> Other (<i>specify</i>): | \$ |
| | \$ |
| | \$ |
| | \$ |
| TOTAL | \$ |
- c. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief, the foregoing items of cost are correct and have been necessarily incurred in this cause or proceeding.

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 DECLARANT)

5. Declaration of nonmilitary status (*required for a judgment*).
 The respondent is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

- I know that the respondent is not in the U.S. military service because (*check all that apply*):
- (a) the search results that I received from <https://scra.dmdc.osd.mil/> say the respondent is not in the U.S. military service.
 - (b) I am in regular communication with the respondent and know that they are not in the U.S. military service.
 - (c) I recently contacted the respondent, and they told me that they are not in the U.S. military service.
 - (d) I know that the respondent was discharged from U.S. military service on or about (*date*):
 - (e) the respondent is not eligible to serve in the U.S. military because they are incarcerated (in jail or prison).
 - (f) other (*specify*):

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the respondent is in the military service, or their military status is unknown, the respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see <https://selfhelp.courts.ca.gov/military-defaults>.

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 DECLARANT)

GOVERNMENTAL AGENCY (under Family Code, §§ 17400 and 17406): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT:	
REQUEST TO ENTER DEFAULT JUDGMENT	CASE NUMBER: _____

1. More than 30 days have passed since service of the summons, complaint, and copy of the proposed judgment.
2. To my knowledge no answer or other responsive pleading has been filed.
3. **Declaration of nonmilitary status (required for a judgment).**
 The respondent/defendant is not in the military service of the United States as defined by either the Servicemembers Civil Relief Act (see 50 U.S.C. § 3911(2)) or California Military and Veterans Code sections 400 and 402(f).

I know that respondent/defendant is not in the U.S. military service because (specify below):

- (a) the military status of the respondent/defendant was checked online at <https://scra.dmdc.osd.mil/>.
- (b) the Child Support Enforcement System has no evidence of active military duty status for the respondent/defendant.
- (c) other (specify): _____

Note

- U.S. military status can be checked online at <https://scra.dmdc.osd.mil/>.
- If the respondent/defendant is in the military service, or their military status is unknown, the respondent/defendant is entitled to certain rights and protections under federal and state law before a default judgment can be entered.
- For more information, see <https://selfhelp.courts.ca.gov/military-defaults>.

4. The local child support agency requests that default and judgment be entered under Family Code section 17430.

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 DECLARANT)

FOR COURT USE ONLY

(1) Default entered as requested on (date): _____

(2) Default not entered as requested. (State reason): _____

By: _____

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
1.	California Department of Child Support Services by Selis Koker, Chief Counsel Rancho Cordova, CA	NI	<p>*While the proposed changes will address the gap in providing specific facts to support the declaration of non-military status, the proposed method to provide these facts will significantly change the processes and workload of our Local Child Support Agencies (LCSA).</p> <p>When an application is received by an LCSA, pursuant to federal law and state policy, an interview must be accomplished within 10 business days to elicit any information to locate, establish or enforce services. The application itself asks if there is a military employer and if the case participant is on active duty. If these questions are left blank, the required interview assures receiving information. In addition, when locating information about a case participant, LCSAs utilize the Federal Parent Locator Service (FPLS), to discover social security numbers, the most recent home address, wage and benefit information as well as employment data. Therefore, with each case, at the time of opening the applicant is asked and locate sources are used to find information about the other case participant, including whether there is a military address and/or employer. When information is gathered, a separate page in the Child Support Enforcement System (CSE) is completed to indicate the military role in the participant’s life, including whether this individual is on active duty. These mandated processes assure that a</p>	Thank you for this information as it helped inform the recommendations that the committees are making to the Judicial Council.

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			<p>check of CSE and its analysis constitute the specific facts you may need on the FL-620 form.</p> <p>When 14 specified criteria are met, including whether the respondent is active in the military, default requests, including the FL-620 <i>Request to Enter Default Judgment</i>, are automatically generated out of CSE. CSE is automated to prevent a default judgment from generation without meeting all specified criteria. When the respondent is on active duty in the military, CSE will not automatically generate a default, but will instead send a task to the assigned case worker to review the case for default.</p> <p>In 2021 the FL-620 form was generated 21,862 times. Assuming case workers need to manually type specific facts into the FL-620 form, an additional 2 minutes of time would be spent which translates to 729 hours of caseworker time annually at the 2021 levels.</p> <p>We understand the reasons for needing the facts but would prefer the use of a checkbox system so that the time required is minimal. In addition, those cases that are processed automatically out of CSE may be coded to check the appropriate boxes.</p> <p>One suggestion would be:</p> <p>[The graphic pasted below has been reduced in size to fit this column.]</p>	<p>The committees agree with these suggestions and have incorporated them, with minor alterations, into the revisions that they are recommending for adoption.</p>

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			<p> <input type="checkbox"/> US military status was checked online at https://scro.dmdc.osd.mil/ <input type="checkbox"/> The Child Support Enforcement System has no evidence of active military duty (for use by IV-D agencies only) <input type="checkbox"/> Other: _____ </p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><small>Note: If the respondent is in the military service, or their military status is unknown the respondent is entitled to certain rights and protections under federal and state law before a default judgment can be entered. For more information see: [insert link to self-help website, currently under development]</small></p> </div> <p>Alternatively, DCSS would hard code into the system something like: “after reviewing the application for services, and parent locator system available within the Child Support Enforcement (CSE) system, there is no indication that respondent is on active military duty.”</p> <p>The appropriate checkbox would be checked, or language coded for automatic insertion for those cases that meet the existing criterion. Without the ability to have standard language on your proposed form, or a checkbox that would allow the system to mark on our automatically generated forms, each form would be required to be manually generated, increasing workload and costs.</p> <p>Of the two alternatives, the checkbox method is recommended. This method reinforces the ways in which a caseworker can verify military service and are familiar to caseworkers who utilize them on other forms. Standard language may cause some caseworkers to overlook the verification process, and a free form box would reduce statewide uniformity as well as increase workloads.</p>	<p>No response required.</p>

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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	Commenter	Position	Comment	Committee Response
			<p>While the comments made were specific to the FL-620, Request to Enter Default Judgment, they also apply to the FL-165, Request to Enter Default which is occasionally used by LCSAs.</p> <p>It may be helpful to develop forms for the circumstance when a respondent is, in fact, on active duty in the military to assist litigants understand what options are available to them, to request appointment of counsel or other remedies to obtain a judgment in these cases.</p>	<p>Based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. Comments will be welcomed regarding the need for and efficacy of any future proposal. Additionally, a link to new online self-help content on the California Courts website, discussing how parties can proceed in these situations, will be included on the forms.</p>
2.	<p>California Partnership to End Domestic Violence by Christine Smith, Public Policy Coordinator Sacramento, CA</p>	AM	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal appropriately addresses the stated purpose. However, we are concerned that pro per litigants will leave question 5 blank because they are being asked to prove a negative. Already pro per litigants leave question 4 on FL150s blank because they don't want to speculate, for the litigants, asking them how they know the other party is not in the military will cause them to feel they have to guess and they will leave it blank. Our recommendation is to offer an option on forms including "other", otherwise pro per litigants will leave the paragraph blank. While the note language could be helpful for many litigants, we are concerned that it puts the burden on the survivor to do additional research on the respondent to find their military status or lack thereof.</p>	<p>The committees agree that providing checkboxes for the declarant to indicate how they know the nonappearing party is not in the U.S. military, while also including an "other" option, will cause less confusion and will be more user-friendly than requiring the completion of a blank, fillable field. This in turn would reduce the number of incomplete default forms that may be rejected by the court.</p>

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			<p>Would it be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel and other requirements under the SCRA when the nonappearing respondent/defendant is in the U.S. military service or their military status is unknown? If so, are there particular processes or forms currently in effect that the commenter believes would be effective?</p> <p>We recommend generally limiting forms unless there is a specific needed purpose, which we do not see in this case.</p>	<p>Based on comments and other feedback received, the committees will consider proposing, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. Comments will be welcomed regarding the need for and efficacy of any future proposal. Additionally, a link to new online self-help content on the California Courts website, discussing how parties can proceed in these situations, will be included on the forms.</p>
3.	Hon. Christine N. Donovan Superior Court of Solano County	NI	<p>In regards to Item 5 on the FL-165 and Item 3 on the FL-620, I propose that the person be required to check one of three boxes. Box One would be a statement that the defaulted respondent is NOT in the military and that the petitioner verified this fact by checking at the SCRA website mentioned on the proposed box. Box Two would be a statement that the defaulted respondent IS in military service but that the respondent has signed or will be signing a stipulated judgment or MSA AND has signed or will be signing a limited waiver of rights on JC form FL-130(A). (Box Two would not be an option in Title IV-D cases [form FL-620] as there is no option for a default with agreement in those cases of which I'm aware. But if that is in fact an option, then it may be worth considering.) Box Three would be a statement that the defaulted respondent IS in military service, that the respondent is not signing an agreement nor</p>	<p>The suggestion to include a statement that the respondent is in U.S. military service on the default forms goes beyond the scope of this proposal. However, based on comments and other feedback received, the committees will consider proposing, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. At that time, comments will be welcomed regarding the need for and efficacy of any future proposal. Additionally, a link to new online self-help content on the California Courts website, discussing how parties can proceed in these situations, is included on the forms.</p>

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SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			executing a limited waiver of rights on JC form FL-130(A), and that the petitioner requests that counsel be appointed for the respondent. All three statements would be under penalty of perjury. I think this could be an efficient use of an existing form and could ensure that the appropriate rights are protected.	
4.	Family Violence Appellate Project Cory Hernandez Staff Attorney	NI	*FVAP would like to join in the comments submitted by the California Partnership to End Domestic Violence regarding this proposal.	See the responses above to the comments received from the California Partnership to End Domestic Violence.
5.	Harriet Buhai Center for Family Law Rebecca L. Fischer, Senior Staff Attorney Los Angeles, CA	AM	<p>Strong Reservations to proposed changes as drafted</p> <p>Does the proposal appropriately address the stated process?</p> <p>We have significant concerns about the proposal as drafted for purposes of Family Law (FL-165 and FL-620). Although we recognize the importance of complying with the Servicemembers Civil Relief Act, the proposed changes present two major concerns: 1) significant barriers to use by pro per litigants and 2) legal interpretation of statutes by clerks.</p> <p><u>Barriers to Use by Pro Per Litigants:</u> Based on our experience and practice, the vast majority of family law default cases are cases filed by a petitioner in pro per. Pro per litigants already face significant hurdles in navigating the default process given the number of forms required and</p>	<p>See response to these concerns below.</p> <p>The committees appreciate this feedback and have made revisions to the forms. See specific responses below.</p>

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			<p>the significant amount of information that must be provided.</p> <p>The proposed changes make the FL-165 even more difficult to complete by requiring litigants to prove a negative without providing any examples of what would constitute a sufficient factual declaration.</p> <p>Listing the website (https://scra.dmdc.osd.mil/) in the note box implies that the expected way to show military status is by using the website. The website is only available in English. The user guide offered by the site is also only available in English and is 54 pages long. Using the site requires setting up an account (again only available in English). The technology and language both present a barrier to pro per litigants. And unlike some otherwise burdensome but relatively rare processes, like service by posting, this step is <i>required</i> in every default case.</p> <p>Although a self-help website that provides more information on the topic would be welcome, it still does not address our concern that the form itself should provide some indication of what would be required under the law without requiring the use of technology.</p> <p><u>Legal Interpretation of Statutes by Clerks:</u> At present in Los Angeles County, the Request to Enter Default is a form processed by court clerks. Unless the form is modified, the form invites</p>	<p>The committees appreciate this feedback and agree that the proposed revision could result in clerks exercising discretion to make legal decisions. The</p>

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

SPR22-12

Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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

	Commenter	Position	Comment	Committee Response
			<p>clerks to use their individual discretion to decide whether or not the facts presented by a litigant are sufficient.</p> <p>In addition, the proposed changes do not make it clear what happens if a clerk decides the information is insufficient; is the form sent to a judicial officer for review before rejection? Does a litigant have to request a special hearing by filing an ex parte? Will default be entered and then only later will the default judgment be rejected because the facts on the form are deemed insufficient by a later clerk or judicial officer?</p> <p>In our experience, even in cases where litigants are represented, clerks routinely reject properly filed request to enter default. These rejections can be based on simple error (looking at the wrong proof of service in the file), improper understanding of facts (deeming a proof of service invalid because the service address is unlike a traditional address in the U.S.) or even misapplication/ misinterpretation of the law (rejecting a request to enter default because it is requested against a third party).</p> <p>The proposed form would only exacerbate this issue because of the variety of ways litigants— particularly those in pro per—will finish the sentence “I know that respondent is not in the U.S. military service because”.</p>	<p>committees have revised the forms accordingly. See specific responses below.</p>

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Civil Law and Family Law: Request to Enter Default Forms Under the Servicemembers Civil Relief Act (Revise forms CIV-100, CIV-105, FL-130, FL-130(A), FL-165, and FL-620)

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			<p>Although there is recourse for correcting an improperly rejected Request to Enter Default, it requires filing an ex parte request which requires knowing that you can file an ex parte request on this issue and having the resources to be able to do so.</p> <p><u>Proposed Changes:</u> We propose adding checkable boxes to item 5 on FL-165 that contain statements that would each individually constitute sufficient facts for purposes of showing non-military status to allow entry of default. The boxes could make filling out the form much easier for the majority of litigants attempting to enter default. If Judicial Council considers checking the website above the minimum standard, that could be one of the boxes (i.e., “I know that respondent is not in the U.S. military service because (specify below): a. respondent’s name does not appear on https://scra.dmdc.osd.mil/”). Other boxes could be tied to relationship with the respondent (“I am in routine contact with Respondent and they are not in the U.S. military service” or “Respondent is not eligible for military service”) or other areas of personal knowledge. There could continue to be space for situations that did not fit one of the boxes.</p> <p>Other Judicial Council forms contain similar checkboxes of listed facts that could support a legal finding. For example, on the FL-200, in</p>	<p>The committees agree with these suggestions and have incorporated them, with minor alterations, into the revisions that they are recommending for adoption. Specifically, the committees agree that including checkboxes for the declarant to indicate how they know the nonappearing party is not in the U.S. military, while also including an “other” option, will cause less confusion and will be more user-friendly than requiring the completion of a blank, fillable field. This in turn would reduce the number of incomplete default forms that may be rejected by the court.</p>

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			<p>item 2, there are checkboxes for the most common reasons the court would have jurisdiction over the Respondent and then a third checkbox is provided for other circumstances.</p>	
			<p>In conjunction with the above changes, we propose amending CA Rule of Court 5.402 to provide that if one of the boxes is marked, clerks may process the Request to Enter Default. If no box is checked and the clerk is going to reject the request, the form must be sent to a judicial officer.</p>	<p>Because the proposed amendment to rule 5.402 would be a substantive change and goes beyond the scope of the current proposal, the committees believe public comment should be sought before it is considered for adoption. The committees may consider this suggestion during a future rules cycle.</p>
			<p>It is our belief that the proposed changes would reduce pro per litigant confusion, reduce potential clerical errors or overreaching, and reduce delays in cases proceeding by default.</p>	<p>The committees agree that the forms will benefit from the proposed changes.</p>
			<p>Would it be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel and other requirements under the SCRA when the nonappearing respondent/ defendant is in the U.S. military service or their military status is unknown? If so, are there particular processes or forms currently in effect that the commenter believes would be effective?</p> <p>Yes.</p>	<p>Based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. Comments will be welcomed regarding the need for and efficacy of any future proposal.</p>
			<p><u>Additional Comments on the Request to Enter Default (FL-165):</u></p>	

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			<p>If the Request to Enter Default is revised, we ask Judicial Council to consider making additional changes to improve the usability of the form.</p> <ul style="list-style-type: none"> • Modify the form to allow for default of a third party. There are many instances in family court when joinder of a third party is required by law. Third parties in family law cases are no more likely to participate in a family law case than first named Respondents. At present, the form does not readily allow for entry of judgment against third parties. <ul style="list-style-type: none"> ○ Add space in the caption to list a third party ○ Change “respondent” in item 1 to read “please enter the default of the party _____ who has failed to respond to the petition” ○ Change all other “respondents” to “party listed in 1” • Insert an optional line to allow a party to identify the date of service and date proof of that service was filed. This would allow parties to identify the proof of service of summons to make review by clerks easier. This is particularly important in cases where multiple proofs of service have been filed or the file is otherwise voluminous. It would also help remind litigants that service must 	<p>Because these proposed changes to form FL-165 would be substantive changes and go beyond the scope of the current proposal, the committees believe public comment should be sought before they are considered for adoption. The committees may consider these suggestions during a future rules cycle.</p>

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			<p>be complete before default is entered. It should be optional because the proof of service may be filed concurrently with the Request to Enter Default.</p> <ul style="list-style-type: none"> ○ 1a (optional) The party in 1 was served with the Summons on _____. Proof of the service of summons was filed on_____. 	
6.	Orange County Bar Association by Daniel S. Robinson, President Newport Beach, CA	A	<p>The proposal adequately addresses the stated purpose of providing appropriate forms to use in certain family law and civil law forms regarding a defendant’s default.</p> <p>Yes, it would be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel and other requirements under the SCRA when the nonappearing respondent/defendant is in the U.S. military service or their military status is unknown.</p>	<p>No response required.</p> <p>Based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. Comments will be welcomed regarding the need for and efficacy of any future proposal.</p>
7.	Superior Court of Los Angeles by Bryan Borys	A	Changes will take longer than 3 months to implement.	The committees appreciate this comment but based on other feedback received believe that 3 months will be sufficient time for courts to implement any required changes.
8.	Superior Court of San Bernardino County Court Executive Office	NI	<p>Does the proposal appropriately address the stated purpose?</p> <p>Not entirely. In the background section of the request for comment, it mentions that “In any action or proceeding covered by this section, the</p>	The committees previously considered whether to expand the scope of the proposal to include new statewide forms to address the procedure for having the court appoint an attorney when the nonappearing party is in U.S. military service or that their status is unknown. However, the

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			<p>court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit – (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) If the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in the military service. The proposed forms do not seem to address section B.</p>	<p>committees decided not to expand the scope of this proposal.</p> <p>Nevertheless, based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. At that time, comments will be welcomed regarding the need for and efficacy of any future proposal. Additionally, a link to new online content on the California Courts website, discussing how parties can proceed in these situations, is included on the forms.</p>
			<p>Would it be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel and other requirements under the SCRA when the non-appearing respondent/defendant is in the U.S. military service or their military status is unknown?</p> <p>We believe so yes. It would make it consistent.</p>	<p>Based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S. military service or that their status is unknown. At that time, comments will be welcomed regarding the need for and efficacy of any future proposal.</p>
			<p>If so, are there particular processes or forms currently in effect that the commenter believes would be effective?</p> <p>None known.</p>	<p>No response required.</p>
			<p>Would the proposal provide cost savings? If so, please quantify.</p>	<p>No response required.</p>

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			<p>No.</p> <p>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Updating form packets. Informing/training staff.</p> <p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>Size should not have an impact.</p>	<p>These implementation requirements are noted in the report.</p> <p>No response required.</p> <p>No response required.</p>
9.	Superior Court of San Diego by Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p> <p>Would it be helpful for the Judicial Council to develop a statewide set of forms to address the appointment of counsel and other requirements under the SCRA when the non-appearing respondent/defendant is in the U.S. military</p>	<p>No response required.</p> <p>Based on comments and other feedback received, the committees will consider recommending, in a future rules cycle, that rules and forms be revised or created to allow for the declarant to indicate to the court that the nonappearing party is in U.S.</p>

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			<p>service or their military status is unknown? If so, are there particular processes or forms currently in effect that the commenter believes would be effective?</p> <p>*Yes, to the extent that they're optional forms allowing courts that have developed local forms to continue to use them.</p>	<p>military service or that their status is unknown. If such a proposal is developed in a future rules cycle, the committees will consider whether any new forms should be mandatory or optional. At that time, comments will be welcomed regarding the need for and efficacy of any future proposal.</p>
			<p>Would the proposal provide cost savings? If so, please quantify.</p> <p>No.</p>	<p>No response required.</p>
			<p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Updating internal procedures, local packets, and training for staff.</p>	<p>These implementation requirements are noted in the report.</p>
			<p>Would 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, if the final versions of the forms are provided to the court by that time. This will ensure that the court is able to provide training to staff, modify local packets and obtain printed stock.</p>	<p>No response required.</p>

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			How well would this proposal work in courts of different sizes? It appears that the proposal would work for courts of all sizes.	No response required.

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