JUDICIAL COUNCIL OF CALIFORNIA

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-17

**Title**
Unlawful Detainers: Answer Form to Implement Assembly Bill 3088

**Rules, Forms, Standards, or Statutes Affected**
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**
December 4, 2020, at noon

**Date of Report**
November 19, 2020

**Contact**
Anne M. Ronan, Legal Services
Judicial Council Support
*judicialcouncil@jud.ca.gov*

*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) changed the practice and procedures relating to all residential unlawful detainer actions from September 1, 2020, through 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 Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee, adopted new and revised forms to assist both courts and parties in determining how to proceed with cases under the new law.

Because the new law was enacted as urgency legislation on August 31, 2020, with many of the new procedures relating to unlawful detainers based on nonpayment of rent becoming operative on October 5, the council approved the new forms and the revised *Answer—Unlawful Detainer* (form UD-105) before form UD-105 was circulated for public comment, so that all the forms could be effective by October 5. The revised form UD-105 has been circulated post-approval, and the Civil and Small Claims Advisory Committee now recommends further revisions in light of comments received.

On November 19, 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 December 7, 2020, revise *Answer—Unlawful Detainer* (form UD-105).

The revised form is attached at pages 11–14, with the changes highlighted.

## Relevant Previous Council Action

Assembly Bill 3088, which includes the COVID-19 Tenant Relief Act of 2020, was enacted as urgency legislation on August 30, 2020, and put in place new provisions addressing unlawful detainer actions that went into effect immediately. (See Link A.) The bill provides, among other things, certain protections against termination of residential tenancies 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 need to provide information beyond the allegations contained in *Complaint—Unlawful Detainer* (form UD-100) or included in individually drafted complaints prior to the enactment of AB 3088. The council adopted *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101), effective October 5, 2020, which includes allegations as to the various facts that a court will need to know to properly apply the new provisions in the AB 3088. At the same time, in light of comments received on form UD-101 and other proposed new forms, the council approved revisions to *Answer–Unlawful Detainer* (form UD-105) to aid defendants in responding to the allegations in new form UD-101 and raising defenses potentially available under AB 3088. Because there was not time to circulate the revised answer form prior to the October 5 effective date, the form was circulated for public comment after the council approved it.

## Analysis/Rationale

For new unlawful detainer cases, the *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101) will effectively act as a supplement to the complaint; for that reason, *Answer—Unlawful Detainer* (form UD-105) was revised so that tenants would be able to use the form to contest those allegations by denying any not true and by asserting potential defenses under the new act.

Form UD-105 was revised effective October 5 in two ways:

- Item 2 (for denials) was revised so that the allegations in new form UD-101 could be denied, either within the general denial or as part of the specific denials; and

- Item 3 was revised to add new items to the checklist of potential defenses in item 3, adding those that a defendant may be able to raise under AB 3088, plus two under federal eviction protections, as well as 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 expressly identified on the form.

In light of the comments provided, the Civil and Small Claims Advisory Committee is now recommending further revisions to the answer form to make items 2 and 3 clearer and easier for self-represented parties to use, and to identify additional defenses applicable under the COVID-19 protections provided in AB 3088 and federal laws and orders. The most significant revisions are summarized below.

In item 2, the item in which a defendant can state a general denial or specific denials as appropriate, descriptive titles have been added to each subpart to clarify what each is for, and the instructions have been expanded and placed immediately following the titles. The items for specific denials of allegations in the complaint have been more clearly separated from the items for specific denials of the supplemental allegations in form UD-101. Additionally, a new subitem 2b(2)(a) has been added to allow a defendant to assert that plaintiff's form UD-101 was not provided. Without this new item, it would be difficult for a defendant to indicate that the new form UD-101 was not included with the complaint—a need noted by several commenters—the omission of which could result in the defendant being deemed to have admitted allegations in a form that was never received.

Item 3 has also been revised in several ways. First, the title has been expanded from "Affirmative Defenses" to "Defenses and Objections." Several commenters requested a change in the item title—or the separation of some of its content into an additional item—, noting that some of the subitems in new item 3m (related to complaints based on nonpayment of rent due between March 1, 2020 and January 31, 2020) could be asserted as defenses that the plaintiff had not stated a prima facie case for unlawful detainer under the provisions of Code of Civil Procedure[1] section 1179.03.[2] Commenters were concerned that if listed under the title of "Affirmative

[1] All further statutory references are to the Code of Civil Procedure unless otherwise noted.

[2] Termination notices based on demands for payment of COVID-19 rental debt that do not include all the elements stated in section 1179.03 are not sufficient to establish a cause of action for unlawful detainer. (§ 1179.03(a).) Because objections that a complaint does not adequately state a cause of action may be raised in either a demurrer or an answer (§ 430.10), and because most self-represented parties will not know how to prepare demurrers, the committee believes that it is appropriate to include such objections in the answer form.

Defenses," parties and judicial officers may assume that the burden of proving such defenses is on the defendant rather than with the plaintiff.

The instruction following the title of item 3 has also been expanded, including by adding a link to the eviction web page on the California Courts Online Self-Help Center, which provides procedural information along with links to web pages with more substantive legal guidance.

Several additional potential defenses were added to item 3:

- That plaintiff failed to provide the general notice of rights required by section 1179.04;
- That plaintiff failed to provide the declaration of COVID-19–related financial distress in the required language as mandated by section 1179.03(d);
- For cases filed after January 31, 2021, that defendant provided the minimum payment required for certain months, in addition to the declaration of COVID-19–related financial distress, to be protected from eviction as provided in section 1179.03(g)(2); and
- For cases filed before February 1, 2021, that the termination of the tenancy is not based on just cause as required in section 1179.03.5(a)(3).

Finally, several items previously included in new item 3m were moved into separate items because the defenses are not limited to only those complaints described in the introduction to that item—that is, complaints based on nonpayment of rent due between March 1, 2020 and January 31, 2020.

**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. However, as noted by many of the commenters on this form, the complexities of the provisions intended to protect landlords and tenants may place unrepresented parties at a disadvantage if clear forms are not provided for their use. The proposed forms will assist courts in providing consistent experiences to all court users—including self-represented parties—attempting to navigate the challenging new provisions set forth in AB 3088.

**Comments**

Form UD-105, approved October 5, 2020, was circulated over a two-week comment period, from October 9 through October 23. Fourteen comments were received on the form, from nine legal service and public advocacy groups (hereafter referred to as Tenant Advocates); the California Lawyers Association's (CLA) Access to Justice Advisory Committee; three individual attorneys, including one from a court self-help center; a group of six California state legislators (the same legislators who commented on the earlier unlawful detainer forms proposal); and the Superior Court of San Diego County.

The comments and the committee's responses to them are all included in the chart of comments at pages 18–89, with a summary of the most significant ones provided below. Most of the commenters did not state a formal position on the October 5 revisions to form UD-105, but instead responded to the questions listed in the "Request for Specific Comments" in the Invitation to Comment (ITC), with some commenters also raising additional issues. None opposed the original revisions to the answer form, although several requested modifications and further revisions.

***Comments in response to questions listed in the ITC***

*1. Does the proposal appropriately address the stated purpose?* Two sets of comments came up in response to this query: concerns regarding the clarity of item 2 on the form raised by the Tenant Advocates, and a suggestion from CLA's Access to Justice Advisory Committee that additional information be added to the form.

Most of the Tenant Advocates' comments on item 2 have been addressed in the revisions made to that item described above. However, the suggestions by some that all references in item 2 to the "complaint" be replaced with the full title of the Judicial Council form complaint (form UD-100) was declined by the advisory committee because form UD-100 is optional, not mandatory. Many unlawful detainer complaints are filed without use of this complaint form. Limiting the use of form UD-105 to only those cases in which the complaint is filed on form UD-100 would severely restrict its usefulness for self-represented defendants.

The CLA's Access to Justice committee responded to this question by suggesting that the answer form should include "contact information and hyperlinks to self-help centers, navigator programs, and other resources maintained by local courts to assist pro per litigants." The committee notes that because this information would differ from court to court, it is not possible to include such information on a statewide form. Moreover, under section 1161.2(c), each court is already required to send a notice to each unlawful detainer defendant that includes information about local attorney referral panels and legal services providers.

The CLA committee also suggested that tenants be informed up front of resources they can turn to for help. In light of this comment, the committee has added—to the instructions at the top of item 3—a link to the California Courts Online Self-Help Center web page that provides information regarding evictions generally,[3] as well as links for information about COVID-19–related protections.

*2. Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?*

[3] California Courts Online Self-Help Center, "Eviction," *https://www.courts.ca.gov/selfhelp-eviction.htm.*

Most of the commenters agreed that this is a valid affirmative defense, although many expressed concern that it be made clear that the 25 percent payment was not required before January 31, 2021, to eliminate any confusion that payments were required at the time the tenant originally delivered the declaration. The committee agrees and has made that clear in new item 3m(6)(b).

At least one commenter disagreed with this addition, asserting that the affirmative defense that a tenant has paid the full minimum amount due for protection under AB 3088 is implicit in the defense that a declaration of financial distress has been provided to the landlord. For tenants served with a notice of termination based solely on failure to pay COVID-19–related rental debt due between March 1 and August 31, 2020 (the "protected" period in the new law), section 1179.03(g)(1) provides that a tenant's provision of the declaration is sufficient to stop an unlawful detainer action. However, for tenants served with a termination notice based on failure to pay COVID-19–related rental debt due between September 1, 2020, and January 31, 2021 (the "transition" period in the new law), section 1179.03(g)(2) provides that timely delivery of a declaration to the landlord stops an unlawful detainer action only until February 1, 2021. From that point, a landlord may bring an unlawful detainer action unless the tenant has, by January 31, 2021, paid 25 percent of all COVID-19–related rental debt due between September 1, 2020, and January 31, 2021. Therefore, in cases filed after January 31, 2021, some tenants may want to assert this as a separate affirmative defense.

*3. Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?*
The Tenant Advocates along with some other commenters noted that there were at least two additional defenses that should be added to the form: failure of plaintiff to show just cause in nonpayment of rent cases and failure to provide the general notice of rights under section 1179.04.[4] As noted above, the committee added both to the form. (See items 3m(1) and 3n.)

One commenter noted that section 1179.03(d) states that, if the landlord was required by law to provide a translation of the rental agreement to the tenant, then the landlord "shall also provide" an unsigned declaration of financial distress in that same language. New item 3m(4) reflects this suggestion.

Commenter Disability Rights Education & Defense Fund (DREDF) suggested adding to the lists of defenses one stating that "Plaintiff seeks to evict Defendant based on disability." DREDF asserts as a reason for this suggestion the fact that the Centers for Disease Control and Prevention's *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19,* 85 Federal Register 55292 (Sept. 4, 2020) (CDC order) allows evictions based on a

[4] Many of the commenters suggest that the defense be that the notice was not served prior to September 30, 2020. However, while section 1179.04(a) states that the notice must be served on tenants who had not made one or more payments during the *protected* period (between March 1 and August 31, 2020), that provision does not make any mention of tenants who do not make payments during the *transition* period (between September 1, 2020 and January 31, 2021). The only reference to that period is by implication in section 1179.04(c), which provides that a termination notice under section 1179.03(b) (regarding the protected period) or 1179.03(c) (regarding the transition period) may not be served on a tenant before the landlord has provided this general notice of rights.

tenant "threatening the health or safety of other residents (*id.* at p. 55294) and, according to DREDF, disability-related behavior may be construed as threatening the health and safety of other residents. The advisory committee notes that there is a defense based on discriminatory action by the landlord on the form already. See item 3f. In addition, the advisory committee is not interpreting the CDC order as part of this proposal. It declines the suggestion to add an affirmative defense based on a landlord acting as expressly permitted under that order.

*4. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?*
The consensus among commenters was that this item should be removed from those relating only to cases for nonpayment of rent between March 1, 2020, and January 31, 2021, because the defense can encompass cases based on non-payment before that period and cases based on reasons other than nonpayment. As noted above, the committee agrees and has moved this item.

Commenter Family Violence Appellate Project (FVAP) also suggested that the standalone affirmative defense that references the CDC order should also advise tenants to seek legal advice through LawHelpCA (*lawhelpca.org*) (which refers parties to lawyers in the area), and contain an advisement that other protections may be available for tenants who do not qualify for AB 3088. The committee declines this suggestion, noting that no such advice to seek legal guidance is included in any of the other defenses listed, although it would be just as applicable in all of them. Moreover, as noted above, information on how to find legal advice is included in the notice courts send out to all unlawful detainer defendants under section 1161.2. In addition, a link to the California Courts Self-Help Online Center web page on evictions, which includes links to information about COVID-19–related protections, has been added to item 3.

CLA's Access to Justice Advisory Committee suggests that all of the subitems in item 3m should be listed separately, each with its own checkbox, so that the defenses do not appear to be contingent on each other. The committee notes that several have now been separated out of 3m, but that the ones that remain are all contingent on the two-line introductory statement in item 3m—that the demand for possession of residential real property is based on nonpayment of rent or other financial obligations due between March 1, 2020 and January 31, 2021. If not placed as subitems under that statement, the statement would have to be repeated at the beginning of each subitem, making the form significantly longer and potentially more confusing.

*5. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?* Comments were mixed on this point, but most agreed the item should be moved, so that it can be used to raise COVID-19–related defenses, state or local, beyond those relating to nonpayment of rent. The committee agrees and has moved the item (see item 3o).

*6. Are there other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m?* The Tenant Advocates, the group of California state legislators, and one of the

individual attorneys all raised the same point—item 3 should be retitled from "Affirmative Defenses" to either just "Defenses" or "Affirmative and Other Defenses." See the discussion above relating to the revision of the title in light of these comments.

***Comments on additional issues***[5]

*Information Sheet*. Commenter Public Law Center suggested developing an information sheet to go along with the answer form. The CLA committee made a similar suggestion.[6] The advisory committee agrees that an information sheet relating to the unlawful detainer answer form is a good idea, but this is a complex area of law and an information sheet will take a substantial amount of time and effort to develop. There has not been the time to do that at this point, although the advisory committee has discussed developing such a form in the future as time and resources allow.

The advisory committee also questions whether a statewide form is the best way to provide information about swiftly changing rights and responsibilities relating to COVID-19 pandemic issues. New web pages have been added to the California Courts Online Self-Help Center relating to the provisions of AB 3088 and the rights and responsibilities of landlords and tenants rights and responsibilities under the new law, with links to more information about both state and federal protections and legal resources.[7] Revising the form to add links to the self-help center information regarding evictions, as has been done in item 3, seems a better alternative than trying to rush development of an additional new form that likely will need to be revised in the coming months.

*Advisement re reasonable accommodations*. Most of the Tenant Advocates suggested that an advisement be added to the form regarding requests for reasonable accommodations by persons with disabilities. This issue was previously raised by commenters in September 2020 in response to the new UD forms circulated at that time, and the committee declined to incorporate the suggestion. Such accommodations are not specific to COVID-19 eviction protections, which are the impetus for this expedited proposal. To the extent advice regarding accommodations from a landlord should be included in a future information sheet on responding to unlawful detainers generally, the committee will consider it 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 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).)

*Advisement re federal domestic violence protections*. Commenter Family Violence Advocacy Project (FVAP) has again requested an advisement be added about additional protections under

[5] Some of the commenters raised, as an "additional issue" in their comments, concerns that expanded item 2 (denials) was confusing; others raised such concerns in response to the first question on the ITC. The issue has been addressed above, in the discussion of the first question on the ITC.

[6] The CLA committee also suggested a rule mandating that such form be served by plaintiff with the complaint and form UD-101. That part of the suggestion is significantly outside the scope of this proposal.

[7] California Courts Online Self-Help Center, "New Laws Apply to Eviction Cases," www.courts.ca.gov/44660.htm.

federal law for domestic violence victims that may be a defense to an eviction, citing title 34 United States Code section 12491. The FVAP made the same request in September, and the committee declined to add them, concluding that those defenses are not specific to COVID-19 eviction protections, which are the impetus for and focus of this expedited proposal. Including such an advisement in an information sheet regarding responding to unlawful detainers generally, will be considered in the future as time and resources allow.

*Request for jury trial*. The Tenant Advocates all suggest that an item be added to the form to allow a tenant to ask for a jury trial. No such item exists on the form complaint or on any other Judicial Council pleading form. This request is outside the scope of this proposal and would be a significant change to the form. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105), as explained on the California Court's Self-Help web page. The advisory committee may consider the suggestion to add it to the answer form in the future as time and resources permit

*Attaching declarations*. The group of six California state legislators noted that they considered the list of affirmative defenses in the October 5 form as circulated complete, but suggested that form UD-105 should also include a copy of the declaration of COVID-19–related financial distress and the declaration under the CDC Order. The committee considered but declined this suggestion. Including the declaration forms with the answer form would lead to confusion as to when and how the declarations are to be provided to a landlord, and could also imply that the declarations must be filed as part of an answer in all unlawful detainer cases. AB 3088 provides that the declaration only applies in residential tenancies and only when the termination is based on nonpayment of COVID-19 rental debt. Even in those cases, it is not supposed to be filed with the court unless defendant did not timely provide a declaration with good cause and, when it is filed, the court must set a hearing to determine if such good cause exists.

Similar arguments apply to the declaration under the CDC order. For example, there is no basis to provide such a declaration in a non-residential case, or in any case filed after December 31, 2020. Nor is there any provision in the CDC order for filing it with the court at all—it is to be provided to the landlord. While a party may want to submit a copy to the court with testimony or a declaration to show it was delivered to the landlord, the CDC declaration itself is not a pleading. Moreover, the council does not adopt federal forms as Judicial Council forms unless mandated to do so. There is no such mandate in the CDC order or in any state law.

**Alternatives considered**

In addition to the alternatives discussed above, the committee considered not recommending any further revisions to form UD-105. However, it concluded that both courts and parties—particularly self-represented litigants—might face difficulties in raising and addressing available defenses under the various COVID-19–related laws if the form were not further revised.

## Fiscal and Operational Impacts

Although AB 3088 will have a significant impact on court operations, the revised form should help to alleviate that impact, by making it less difficult for judicial officers to adjudicate unlawful detainer proceedings in compliance with the new law. Court staff, judicial officers, and self-help center staff will need to be made aware of the revised forms, and that older versions should not be rejected (see Cal. Rules of Court, rule 1.42.).

## Attachments and Links

1. Form UD-105 at pages 11–14
2. Voting instructions at page 15
3. Vote and signature pages. at pages 16–17.
4. Chart of comments at pages 18–89.
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*

| ATTORNEY OR PARTY WITHOUT ATTORNEY | STATE BAR NUMBER: | *FOR COURT USE ONLY* |
|---|---|---|
| NAME: | | |
| FIRM NAME: | | |
| STREET ADDRESS: | | |
| CITY: | STATE: ZIP CODE: | DRAFT |
| TELEPHONE NO.: | FAX NO.: | |
| E-MAIL ADDRESS: | | |
| ATTORNEY FOR *(name)*: | | |
| **SUPERIOR COURT OF CALIFORNIA, COUNTY OF** | | 12/03/20 |
| STREET ADDRESS: | | |
| MAILING ADDRESS: | | |
| CITY AND ZIP CODE: | | |
| BRANCH NAME: | | |
| PLAINTIFF: | | |
| DEFENDANT: | | |
| **ANSWER—UNLAWFUL DETAINER** | | CASE NUMBER: |

1. Defendant *(all defendants for whom this answer is filed must be named and must sign this answer unless their attorney signs):*

answers the complaint as follows:

2. ***DENIALS (Check ONLY ONE of the next two boxes.)***

a. ☐ **General Denial** *(Do not check this box if the complaint demands more than $1,000.)*
Defendant generally denies each statement of the complaint and of the *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101).

b. ☐ **Specific Denials** *(Check this box and complete (1) and (2) below if complaint demands more than $1,000.)*
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) **Denial of Allegations in Complaint (Form UD-100 or Other Complaint for Unlawful Detainer)**

(a) 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 form MC-025, titled as Attachment 2b(1)(a).

(b) 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 form MC-025, titled as Attachment 2b(1)(b).

(2) **Denial of Allegations in *Mandatory Cover Sheet and Supplemental Allegations—Unlawful Detainer* (form UD-101)**

(a) ☐ Defendant did not receive plaintiff's *Mandatory Cover Sheet and Supplemental Allegations* (form UD-101). *(If not checked, complete (b) and (c).)*

(b) 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 form MC-025, titled as Attachment 2b(2)(b).

(c) 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 form MC-025, titled as Attachment 2b(2)(c).



Form Approved for Optional Use
Judicial Council of California
UD-105 [Rev. December 7, 2020]



Civil Code, § 1940 et seq.;
Code of Civil Procedure, §§ 425.12,
1161 et seq., 1179.01 et seq.
www.courts.ca.gov

CASE NUMBER:

3. **DEFENSES AND OBJECTIONS** (*NOTE: For each box checked, you must state brief facts to support it in item 3s (on page 3) or, if more room is needed, on form MC-025. You can learn more about defenses and objections at www.courts.ca.gov/selfhelp-eviction.htm .)*

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 3s the facts showing violation of the ordinance.)*

h. ☐ Plaintiff's demand for possession is subject to the Tenant Protection Act of 2019, 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 3s 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, § 1947.12, 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 of a residential property is in retaliation for nonpayment of rent or other financial obligations due between March 1, 2020, and January 31, 2021, even though alleged to be based on other reasons. (Civ. Code, § 1942.5(d).)

m. ☐ Plaintiff's demand for possession of a residential property 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 general notice of rights under the COVID-19 Tenants Relief Act as required by Code of Civil Procedure section 1179.04.

(2) ☐ Plaintiff did not serve the required 15-day notice. (Code Civ. Proc., § 1179.03(b) or (c).)

(3) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress with the 15-day notice. (Code Civ. Proc., § 1179.03(d).)

(4) ☐ Plaintiff did not provide an unsigned declaration of COVID-19–related financial distress in the language in which the landlord was required to provide a translation of the rental agreement. (Code Civ. Proc., § 1179.03(d).)

(5) ☐ Plaintiff identified defendant as a “high-income tenant” in the 15-day notice, but plaintiff did not possess proof at the time the notice was served establishing that defendant met the definition of high-income tenant. (Code Civ. Proc., § 1179.02.5(b).)

m. (6) (a) ☐ Defendant delivered to plaintiff one or more declarations of COVID-19–related financial distress. (Code Civ. Proc., § 1179.03(f).) *(Describe when and how delivered):*

(b) ☐ *(For cases filed after January 31, 2021)* Defendant, on or before January 31, 2021, paid or offered plaintiff payment of at least 25% of the total rental payments that were due between September 1, 2020, and January 31, 2021, and that were demanded in the termination notices for which defendant delivered the declarations described in (a). (Code Civ. Proc., § 1179.03(g)(2).)

(7) ☐ 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).)

n. ☐ *(For cases filed before February 1, 2021)* Plaintiff's demand for possession of a residential tenancy is based on a reason other than nonpayment of rent or other financial obligations, and plaintiff lacks just cause for termination of the tenancy, as defined in Civil Code section 1946.2(b) or Code of Civil Procedure section 1179.03.5(a)(3)(A).

o. ☐ 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 3s).*

p. ☐ *(For cases filed before January 1, 2021)* Defendant provided plaintiff with a 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 55292 at 55297), and plaintiff's reason for termination of the tenancy is one that the temporary halt in evictions applies to. *(Describe when and how provided):*

q. ☐ *(For cases filed before January 1, 2021)* Plaintiff violated the federal CARES Act, because the property is covered by that act and *(check all that apply)*:

(1) ☐ The federally-backed mortgage on the property was in forbearance when plaintiff brought the action. (15 U.S.C. § 9057.)

(2) ☐ The plaintiff did not give the required 30 days' notice. (15 U.S.C. § 9058(c).)

r. ☐ Other defenses and objections are stated in item 3s.

s. *(Provide facts for each item checked above, either below, or, if more room needed, on form MC-025)*:
☐ Description of facts or defenses are on form MC-025, titled as Attachment 3s.

4. OTHER STATEMENTS

a. ☐ Defendant vacated the premises on *(date)*:

CASE NUMBER:

4. 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):*
☐ Explanation is on form MC-025, titled as Attachment 4b.

c. ☐ Other *(specify below or, if more room needed, on form MC-025):*
☐ Other statements are on form 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 form 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)



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

Print this form Save this form Clear this form

# 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 **December 4 at noon.**

- If you are unable to reply by December 4 at 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 December 7, 2020, the Judicial Council approves the revised *Answer—Unlawful Detainer* (form UD-105).

My vote is as follows:

☐ Approve ☐ Disapprove ☐ Abstain

| | |
|---|---|
| Tani G. Cantil-Sakauye, Chair | Marla O. Anderson |
| Richard Bloom | C. Todd Bottke |
| Stacy Boulware Eurie | Kevin C. Brazile |
| Kyle S. Brodie | Jonathan B. Conklin |
| Carol A. Corrigan | Samuel K. Feng |
| Brad R. Hill | Rachel W. Hill |
| Harold W. Hopp | Harry E. Hull, Jr. |

My vote is as follows:

☐ Approve ☐ Disapprove ☐ Abstain

Hannah-Beth Jackson

Patrick M. Kelly

Dalila Corral Lyons

Gretchen Nelson

Maxwell V. Pritt

David M. Rubin

Marsha G. Slough

Date: _____

Attest:

Administrative Director and
Secretary of the Judicial Council

## SP20-07

**Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088** (Revise form UD-105)

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

| | Commenter | Position | Comment | Committee Response |
|---|---|---|---|---|
| 1. | Asian Americans Advancing Justice—Asian Law Caucus<br>by Tiffany L. Hickey, Esq. &<br>Arianna Cook-Thajudeen, Esq.<br>Housing Rights Program | NI | We write respectfully in response to the Judicial Council's Invitation to Comment SP20-07, *Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088*. We understand and appreciate that the Judicial Council has been required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. As discussed in our prior comment letter, these forms are particularly critical in a pandemic when many tenants in crisis will be facing eviction without legal counsel. Thus it is especially important to ensure that the forms are clear, easy to use, and allow tenants a meaningful opportunity to assert relevant defenses.<br><br>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.<br><br>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. [FN 1. Tracking Coronavirus in California, L.A. TIMES (October 22, 2020), https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/; also https://covid19.ca.gov/state-dashboard/#top.] 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, litigants, and | The committee appreciates the comment. |

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

| | Commenter | Position | Comment | Committee Response |
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| | | | attorneys to navigate this uncharted territory. Given the onslaught of evictions faced by Californians, [FN 2. UD Day: Impending Evictions and Homelessness in Los Angeles, The UCLA Luskin Institute on Inequality and Democracy, Gary Blasi (May 28, 2020), https://challengeinequality.luskin.ucla.edu/2020/05/28/ud-dayreport/.] we hope the comments and suggestions in this letter help to 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.<br><br>Below we address the Council's specific inquiries and offer additional general suggestions.<br><br>**I. Does the proposal appropriately address the stated purpose?**<br>The changes address the stated purpose in part by allowing defendants to raise defenses related to COVID-19 eviction protections. However, as discussed further below, the form is confusing and should be improved for clarity and ease of use for unrepresented litigants fighting to save their homes.<br><br>**II. Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?**<br>This addition could be helpful or harmful. Including it will help tenants to identify and raise the defense, but it could also cause confusion. This defense is already implicitly included in the broader affirmative defense at section | See responses to specific suggestions below.<br><br>The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the |

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| | Commenter | Position | Comment | Committee Response |
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| | | | m(4)(a) of the proposed form. Addition of the specific defense might cause confusion by implying that tenants must have paid 25% of the rent in order to have a defense regardless of timing. If the Council elects to add this defense, the form should be clear that tenants have until January 31, 2021 to pay. We also suggest that if the Council adds this defense, it be added as another subsection of section (m) to avoid confusion.<br><br>Regardless of this potential addition, we further recommend that section m(4)(b) be separated from section (m) because the CDC Order does not limit protections to the nonpayment of rent due between March 1, 2020 and January 31, 2021. This is a separate protection that includes nonpayment of rent during the listed time period and more. Including it here is confusing and misleading to litigants who qualify for protection under the CDC Order for reasons outside the prefatory statement to section (m).<br><br>**III. Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?**<br>Yes. As drafted, the Answer form does not reflect that AB 3088 temporarily applies the just cause protections of the Tenant Protection Act to all tenants, regardless of the Tenant Protection Act's exemptions or length of tenancy requirements. There should be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allows tenants to allege just cause protections *if* they are covered by the Tenant Protection Act's requirements. This is incorrect under AB 3088 all litigants should have a clear option to assert this defense. | concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date.<br><br>The committee agrees that the affirmative defense that a declaration has been provided under the CDC Order should be separate from the defenses available under AB 3088. It is now in separate item 3p.<br><br>A defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenant Protection Act can continue to use item 3h for this defense.) |

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

| | Commenter | Position | Comment | Committee Response |
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| | | | In addition, the form should allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of rights under COVID-19 Tenant Relief Act of 2020 before September 30, 2020. We suggest this also be added as a subsection of section (m). | A defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline in section 1179.04(a) appears to only refer to notices to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. |
| | | | **IV. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes. As described above, while there is some overlap between the protections provided by AB 3088 and the CDC's temporary eviction moratorium, they have different criteria and offer different protections. Having the CDC affirmative declaration defense grouped with the defenses under AB 3088 in section (m) will likely cause confusion and will lead Defendants who qualify for protection under the CDC Order for reasons not described in section (m) to fail to plead that defense. | The committee agrees; see new item 3p. |
| | | | **V. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes. Many local jurisdictions have enacted more expansive eviction protections than those provided under AB 3088 or the CDC's order. For example, San Francisco has | The committee agrees that the "other" defense should be separate from item 3m. See new item 3o. |

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

| | Commenter | Position | Comment | Committee Response |
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| | | | temporarily prohibited all residential evictions unless necessary due to violence, threat of violence, or health and safety issues. [FN 3. OFFICE OF THE MAYOR OF SAN FRANCISCO, Mayor London N. Breed, Executive Order Extending Residential Eviction Moratorium (Aug. 25, 2020), https://sfmayor.org/sites/default/files/08252020_Extension_Res_Eviction_Moratorium.pdf; see also Supervisors ban no-fault evictions in SF through March, San Francisco Examiner (October 7, 2020), https://www.sfexaminer.com/news/supervisors-ban-no-fault-evictions-in-sf-through-march/.] Providing a separate line for local COVID-19 related ordinances will reduce confusion and alert Defendants to the possibility of local protections.<br><br>**VI. Other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m**<br>Yes. The entire section should be retitled. Many of the items listed under "Affirmative Defenses" are actually part of Plaintiffs' prima facie case, including service of the 15 day Notice and Notice of rights. Tenants who are represented by counsel can submit briefing explaining that calling an item an affirmative defense does not mean that the tenant bears the burden of proof. (*See Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756). But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants. | In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |

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| | Commenter | Position | Comment | Committee Response |
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| | | | While this issue is not new to the Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel amidst a myriad of new laws. Tenants who are not represented will not be able to explain to the court that the plaintiff has the burden to prove service of the required notices. Therefore this section should be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues.<br><br>**VII. Additional issues**<br>**A. Revision of Section 2**<br>Section 2 of the Proposed Answer is confusing. The general denial paragraph should be separate so it is easy to see that it is a standalone option. The second section where tenants are required to separately respond to allegations should also be revised and should include a checkbox where Defendant can assert that Plaintiff failed to serve the Mandatory Cover Sheet and Supplemental Allegations form.<br><br>This section should also be amended to break up responses to the Complaint and the Cover Sheet separately, instead of referring to them jointly in Item 2(b). Also, to avoid any confusion and to make clear that two separate documents are being referenced, the full title of the form Complaint-Unlawful Detainer (form UD-100) should be written out and italicized, consistent with the Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer (form UD-101) so that it is clear to Defendants that two separate forms are being referenced. | In light of this and other similar comments, the committee has revised item 2, adding titles to each subpart and adding a checkbox where defendant can state that form UD-101 was not received.<br><br>The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited only to those cases in which the complaint is filed on form UD-100. |

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| | | | **B. Add reasonable accommodation language**<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. [FN 4. 2 C.C.R. §§ 12176-12178.]<br><br>Because people with disabilities will face many additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. | The committee declined this request when developing the forms in September, and does so again. Although the statement 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 should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).) |
| | | | **C. Add a jury request box**<br>Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury trial so they do not have to file another additional form.<br><br>**VIII. Conclusion**<br>While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about | This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |

| | Commenter | Position | Comment | Committee Response |
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| | | | access to justice for people who receive an unlawful detainer summons and cannot access legal assistance. These households will be left to navigate this confusing web of policies on their own, at a time when many courts have shortened or limited hours and 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. We appreciate your efforts to make these forms accessible and as comprehensive as possible in this challenging situation.<br><br>Even where local jurisdictions have passed eviction protections, tenant litigants may not understand how these protections apply or how to use them. COVID-19 has greatly reduced the resources and access to information and services otherwise available to tenants: self-help centers are closed or providing limited services, legal aid offices are operating remotely, and courts are employing a wide range of remote operating procedures that create more barriers for low-income people, people with limited English proficiency, and people with disabilities to navigate. | |
| 2. | Bay Area Legal Aid<br>by J. Olabisi Matthews, Lara Verwer, & Jia Min Cheng<br>Staff Attorneys | NI | We appreciate the Judicial Council's quick action in implementing the complex new laws protecting tenants from eviction during the COVID-19 pandemic. We recognize that, in order to fully implement the new laws, amendments to the Answer form UD-105 were required to address the supplemental allegations in proposed form UD-101. We commend the Committee for its quick response in making a revised UD-105 available.<br><br>Bay Area Legal Aid ("BayLegal") is a regional non-profit law firm providing free civil legal services to eligible low- | The committee appreciates the comment. |

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| | | | income individuals and families throughout the Bay Area. Each year, we serve approximately 10,000 low-income individuals in seven of the nine Bay Area counties. In the past year, BayLegal served 4,021 individuals and households who are unstably housed, homeless, or at-risk of homelessness.<br><br>The scope of the need for civil legal assistance by low-income Californians far outstrips the supply of attorneys and advocates. This was true before the pandemic. [FN 1. The State Bar of California estimated that given the state's poverty rate, an additional 8,961 full-time attorneys would be needed to resolve all the civil legal problems experienced each year by low-income Californians. See The State Bar of California, California Justice Gap Study, revised Feb. 2, 2019, available at https://www.calbar.ca.gov/Portals/0/documents/accessJustice/Justice-Gap-Study-Executive-Summary.pdf.] We have observed that the need is even greater now because of the pandemic. In order to maximize the number of households at-risk of homelessness that we can serve, we have revised our pro per Answer Packet with an eye toward making it more readable to the layperson and easy to use for the low income communities we serve. It is our hope that use of such pro per Answer Packets will empower these most vulnerable households to take action to avoid UD defaults. To be evicted at this time will likely plunge these individuals and families into homelessness or force them out of their communities. To this end, we have met with the Alameda County Court Self-Help Center and shared our pro per Answer Packet at their request. We have plans to engage with the Court Self-Help Centers in the other Bay Area counties as well in order to ensure that this tool is | |

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| | | | available to as many people in need as possible. In reviewing the revised form for purposes of updating our pro per Answer Packet, we identified several areas of concern and we appreciate this opportunity to comment and recommend potential further revisions in order to ensure due process for tenants.<br><br>I. **Responses to Specific Requests**<br>With reference to your request for specific comments, we have made the following observations and request the following revisions:<br>*Does the proposal appropriately address the stated purpose?*<br>The changes address the stated purpose in part by allowing defendants to raise defenses related to COVID-19 eviction protections. However, as discussed further below, the revised UD-105 form is confusing and we urge that it be further improved for clarity. Given the extreme financial hardship California 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 *pro se* require the opportunity to contest supplemental allegations with checkboxes that are at least as straightforward as proposed form UD-101 is for plaintiffs.<br><br>For clarity, we recommend revisions to item 2. The revised form added 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) | In light of this and other similar comments, the committee has revised item 2, adding titles to each subpart and adding a checkbox |

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| | | | or a specific denial (items 2b(3) and (4)). However, this assumes that the Plaintiff complied with the obligation to file and serve form UD-101. There have been instances where a Defendant was not served with form UD-101. If defendants are not served with form UD-101 and are required to admit allegations in the UD-101 form except for listed paragraphs in 2b(3) and (4), defendants may be forced to erroneously admit allegations in a document that they were never served with. Therefore, the form should include a checkbox to allow Defendants to allege that Plaintiff failed to serve, or that the Defendant never received the Mandatory Cover Sheet and Supplement Allegations Form UD-101.<br><br>Additionally, item 2(b) combines responses to the Complaint and the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101). This is highly confusing for Defendants who may fail to properly respond to or deny allegations in either of the forms. Therefore, we recommend item 2(b) be broken up to the following:<br>2(b) Defendant admits all statements of the *Complaint-Unlawful Detainer* (form UD-100) are true, except . . .<br>(1) Defendant claims the following statements of the Complaint are false . . .<br>(2) Defendant has no information or belief that the following statements of the C*omplaint-Unlawful Detainer* (form UD-100) are true, so defendant denies them . . .<br><br>2(c) Defendant admits all allegations of the *Mandatory Cover Sheet and Supplemental* | where defendant can state that form UD-101 was not received.<br><br>The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. (Item 2.b(1) and (2).) |

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

| | Commenter | Position | Comment | Committee Response |
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| | | | *Allegations- Unlawful Detainer* (form UD-101) are true, except . . .<br>(1) Defendant claims the following statements on the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101) are false . . .<br><br>(2) Defendant has no information or belief that the following statements of the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101) are true, so defendant denies them . .<br>.<br>Breaking up item 2(b) will allow Defendants to deny statements in the Supplemental Allegations in form UD-101 separately from the statements in the Complaint. Also, to avoid any confusion and to make clear that two separate documents are being referenced, the full title of the form *Complaint- Unlawful Detainer* (form UD-100) should be written out and italicized, consistent with the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101) so that it is clear to Defendants that two separate forms are being referenced. | The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited only to those cases in which the complaint is filed on form UD-100. The form number has been added as an aid to defendants. |
| | | | *Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?*<br>It would be appropriate if the form was being used on or after February 1, 2021. Tenants have until January 31, 2021 to pay 25 percent of the cumulative rental debt for the covered time period per California Code of Civil Procedure | The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been |

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| | Commenter | Position | Comment | Committee Response |
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| | | | section 1179.03(g)(2)(B). Tenants cannot be guilty of an unlawful detainer for failure to pay any of the amount for the covered period until the cumulative debt becomes due beginning February1, 2021. Adding this specific defense might cause confusion by implying that tenants must have paid 25% of the rent in order to have a defense regardless of timing.<br><br>If the Council elects to add this defense, we urge that it be certain that the form makes clear that tenants have until January 31, 2021 to pay. Since this defense is already implicitly included in the broader affirmative defense at section m(4)(a) of the proposed form, we recommend amending item 3m(4) with the following language:<br>3m (4)(c)(i) Defendant paid at least 25% of the rent for the covered month(s) at issue.<br>3m(4)(c)(ii) Plaintiff filed the Complaint before Defendant's 25% of the rent for the covered month(s) became due.<br><br>*Are there additional affirmative defenses under AB 3088 or federal eviction law that should be added to item 3 on the form?*<br>Yes. The revised Answer form does not reflect that AB 3088 applies the just cause protections of the Tenant Protection Act to all tenants, regardless of the Tenant Protection Act's exemptions or length of tenancy. We recommend that there be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allows tenants to allege just cause protections if they are covered | provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date.<br><br>A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.) |

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

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| | | | by the Tenant Protection Act. We think that the current language will cause confusion for many pro se defendants.<br><br>In addition, the form should allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of rights under COVID-19 Tenant Relief Act of 2020 before September 30, 2020.<br><br>*Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?*<br>Yes, but it might be helpful to separate it and make it standalone as 3m(5) rather than 3m(4)(b).<br><br>*Would it be appropriate to have the affirmative defense of "other" violation of COVID-19 Tenant Relief Act of 2020 or a local COVID-19 related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?*<br>Yes.<br><br>*Are there other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m?*<br>Yes, we urge that entire section be retitled. Many of the items listed under "Affirmative Defenses" are actually part of plaintiffs' prima facie case, including service of the 15 day notice and notice of rights. Tenants who are represented by counsel can submit briefing explaining that | A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination.<br><br>The committee agrees; see new item 3p.<br><br>The committee agrees; see new item 3o<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer |

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| | | | calling an item an affirmative defense does not mean that the tenant bears the burden of proof. (*see Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756). But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants.<br><br>While this issue is not new to the Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel. Tenants who are not represented will not be able to explain to the court that the plaintiff has the burden to prove service of the required notices. Therefore, we urge that this section be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues.<br><br>II. **Additional Comments**<br>*Add Reasonable Accommodation Language*<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics.<br><br>Because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, we urge that the form include an | or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials.<br><br>The committee declined this suggestion when it was made in September, and does so again now. Although the statement 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 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 |

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| | | | advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. | 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).) |
| | | | *Add a Jury Request Box*<br>Tenants are being asked to complete and understand a very large number of lengthy and complex forms due to the new COVID-19 protections. We urge that the Council please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury without adding the undue burden of filing yet another form. This can easily be incorporated in item 5 within "Defendant Requests." | This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |
| | | | III. **Conclusion**<br>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 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 likely unfamiliar and novel 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 strongly urge that the Judicial Council make the amendments we describe above. | |

## SP20-07

**Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088** (Revise form UD-105)

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

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| 3. | California Lawyers Association, Access to Justice Advisory Committee<br>by Emilio Varanini<br>President and Co-Chair<br>& Ellen Miller<br>Associate Executive Director and Co-Chair | NI | The Access to Justice Advisory Committee of the California Lawyers Association (CLA) appreciates the opportunity to comment on the revised answer form, UD-105, for Unlawful Detainer actions in accordance with this Committee's Invitation to Comment set out in SP 20-07. The Committee commends the Civil and Small Clams Advisory Committee for issuing the form under what was an extremely tight deadline to implement legislation that had to balance the complex interests of landlords and tenants. We recognize that the form as it now stands attempted to reconcile, in commendable fashion, the complex issues addressed in Assembly Bill 3088 and comparable federal initiatives in a manner that best fits those measures in reconciling and protecting the interests of both tenants and landlords. Accordingly, the Access to Justice Committee of CLA supports the continued use of that form as proposed—with some important caveats:<br><br>(1) Affirmative defenses available under Assembly Bill 3088, the comparable federal initiative of the Center for Disease Control, other federal laws, or local ordinances should be listed on the form as separate items with separate check-off boxes;<br><br>(2) Contact information and hyperlinks should be provided on the form itself to self-help centers, navigator programs, and other resources maintained by local courts to assist pro per litigants in navigating through the form; and<br><br>(3) Consideration should be given to drafting a cover sheet or other information sheet that would be served with UD-101 (approved by the Judicial Council on October 5, 2020) that will both inform renters that they may have rights | The committee appreciates the comments.<br><br>Each of these is addressed below, where they are discussed in more detail. |

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

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| | | | under Assembly Bill 3088, the eviction moratorium order of the Center for Disease Control, and other federal laws and local ordinances, and provide them information both as to resources that can assist them as to next steps as well as the timeline for taking those steps.<br><br>As Professor Emeritus of Law Gary Blasi of UCLA observed in his letter to the Judicial Council on the subject of COVID-related evictions, dated September 16, 2020, the risk of eviction is dire: he estimated back in May of this year that there were approximately 365,000 households at risk of eviction and potential homelessness in L.A. County due to the economic effects of COVID-19. The same letter also cited to a study of the Aspen Institute that estimated that as of August of 2020, more than 1.8 million Californian renter households were at risk of eviction, which he viewed as signaling that more than 600,000 households would be at risk in L.A. County due to the economic effects of COVID-19. This threat of massive evictions and foreclosures also exacerbates the continued threat to public health as we enter what news reports have labelled as the third peak of COVID-19, with cases beginning to spike all over the country as we enter the Fall and Winter.<br><br>The Access to Justice Advisory Committee of CLA is equally mindful of the economic effects of COVID-19 on landlords who are deprived of the rent they need to pay mortgages and other debt. Assembly Bill 3088, however, balanced those interests against the interests of tenants, as witnessed by those provisions requiring high-income tenants to submit additional documentation. And the Judicial Council has closely adhered to its provisions, | |

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| | | | following the recommendations of the Civil and Small Claims Advisory Committee, both in its Plaintiff's Unlawful Detainer form and in its Defendant's Answer.<br><br>This Committee specifically requested input in SP 20-07 as to whether the Revised Answer Form should list and break out several affirmative defenses to non-payment of rent as separate items, including the following: (1) the Defendant's providing a declaration of financial distress covering all of the months between September 1 and January 31 that are at issue in the action and stating that they have paid at least 25% of rent or other financial obligations; (2) Defendant's providing the declaration required by the Center for Disease Control's temporary eviction moratorium order; (3) Plaintiff violated Assembly Bill 3088 (referred to in the form and in the bill as the COVID-19 Tenant Relief Act of 2020; and (4) Plaintiff violated a local COVID-19 related ordinance.<br><br>The Access to Justice Advisory Committee of CLA believes that the lumping these affirmative defenses as part of one item, 3m, with multiple check-off boxes all located within the one item will lead to confusion, especially on the part of pro per litigants, as to whether these affirmative defenses are all related to one another and must all be present in some fashion for Defendants to be able to invoke any of these defenses. We thus recommend that these affirmative defenses (and any others reasonably known to exist based on federal, state, and local provisions in this area) be broken out as separate items on the form, indicating that they are separate affirmative defenses any one of which may apply for a Defendant. | The committee notes that several subitems have now been separated out of 3m, but that the ones that remain are all contingent on the 2-line introductory statement in 3m—that the case is one based on a demand for possession of residential real property based on nonpayment of rent or other financial obligations due between March 1, 2020 and January 31, 2021. If not placed as subitems under that statement, the statement would have to repeated at the beginning of each of the subitems, making the form significantly longer and potentially significantly more confusing, |

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| | | | The Access to Justice Advisory Committee of CLA understands that arguments exist as to whether some of these defenses are in fact contingent on others (e.g., it has been argued that Assembly Bill 3088 has trumped the effectiveness of the Center for Disease Control's temporary moratorium in this state) or may be otherwise limited. We take no position on the validity, or lack thereof, of those arguments. However, the courts can determine whether, and to what extent, those arguments are valid in the course of litigation. These arguments do not require the lumping together of disparate affirmative defenses and thereby risking confusion for defendants. The Access to Justice Advisory Committee notes that the Judicial Council deemed providing a checklist for Defendants (Tenants) to be as important a goal as providing a checklist for Plaintiffs (Landlords) at page 16 of the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15; the Access to Justice Advisory Committee of CLA agrees but believes this goal can best be effectuated by providing a separate check-off box and line item for each affirmative defense rather than lumping them all in under one item 3m. [FN 1. The Access to Justice Advisory Committee of CLA also recommends that this Committee consider whether these affirmative defenses need be listed as far down as they are on the current version of the Revised Answer. Given the accelerating economic and public health dislocations arising from COVID-19 over the next few months, it is worth considering what defenses will most likely need to be asserted by tenants over the next few months and into next year. In any consideration, the Access to Justice Committee agrees that long-existing, important defenses should not be overlooked by being placed in a | The committee declines to move defenses that have been on the form for many years, and so have item numbers which judicial officers, legal service providers, and self-help centers are familiar with. While this commenter believes the COVID-19–related defenses may be the most important over the next few months, the other defenses are likely to remain important for many months and years, and re-numbering them would lead to confusion without long-term benefit. |

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| | | | disadvantageous position, such as those listed in 3j of the form.]<br><br>This Committee also specifically requested input in SP 20-07 as to whether its "proposal adequately address[es] the stated purpose." In that regard, the Access to Justice Advisory Committee of CLA further recommends that contact information and hyperlinks should be provided on the form to self-help centers, navigator programs, and other resources maintained by local courts to assist pro per litigants in navigating through the form.<br><br>Given the magnitude of the impending wave of evictions, and the complexity of the form, assistance for pro per defendants is crucial to enable them to understand their rights and respond accordingly. As was noted at pages 14 to 15 of the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15, the form must be filed as a responsive pleading, whether or not the declaration of financial hardship allowed by Assembly Bill 3088 or a similar declaration allowed by the eviction moratorium of the Center for Disease Control is also filed. This form thus is a critical part of ensuring that tenants may, as defendants, invoke the defenses provided for by these state and federal initiatives (as well as any local ordinances)—and as such pro per defendants need to know upfront where they may find assistance. In this way, the important economic and public health objectives of these initiatives in protecting tenants may be met without denying landlords their day in court.<br><br>The Access to Justice Advisory Committee of CLA is aware that the Access Commission (on which members of | The committee notes that because this information would differ from court to court, it is not possible to include such information on a statewide form. Moreover, under section 1161.2(c), each court is already required to send a notice to each unlawful detainer defendant including information about local attorney referral panels and legal services providers.<br><br>In light of this comment and other similar ones, the committee has added—to the instructions at the top of item 3—a link to the online California Courts Self-Help Center's page that provides information regarding evictions generally, and which also has links for information about COVID-19 related protections. |

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| | | | the Access to Justice Advisory Committee of CLA also serve) previously recommended that information about the new rights for tenants conferred by such initiatives as Assembly Bill 3088 be provided on court websites, by self-help centers, etc. And we are aware that this Committee responded by pointing out at page 13 of the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15 that it had notified council staff working with self-help centers or the courts' self-help web site—a response that we applaud. However, more can and should be done, consistent with the urgent nature of the issues that motivated the passage of Assembly Bill 3088 and the federal eviction moratoriums, by ensuring that tenants up front are notified of resources to which they can turn to understand and avail themselves of these important rights. Commentators in the CO-20-15 proceeding of this Committee, such as the Asian-Americans Advancing Justice – Asian Law Caucus at page 6 of its comments, stressed the complex nature of these new laws protecting tenants and expressed concern about the inability of tenants to access legal aid; we agree. [FN 2. Because of the inequities that exist in terms of Internet access among underserved and discriminated against populations, the Access to Justice Advisory Committee of CLA recommends that telephonic contact information also be provided to enable tenants to reach self-help centers and/or local legal aid organizations designated by local courts to serve as pro bono resources for tenants seeking advice on the complexities of these rights. CLA, for example, has set up a pro bono service, in conjunction with the Alameda County Bar Association and the American Bar Association, by which it provides legal advice on COVID-related issues to Northern California (and soon all of California): | As noted above, because contact information for self-help centers and local legal aid providers is not statewide, but local, there is no way to include it on statewide forms |

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| | | | https://calawyers.org/covid-19-public-resources/#Collaborative.]<br><br>Finally, the Access to Justice Advisory Committee of CLA proposes that this Committee consider drafting a cover sheet or information sheet that would be served with the UD-101 complaint form. That cover sheet would fully apprise Defendants of defenses that they could assert in response, the time frame for them to respond, and direct them to appropriate resources to aid them in so responding. This recommendation would address this Committee's call in SP 20-07 for comments as a whole on the proposal as a whole as well as its impact on self-help center staff and judicial officers. We note that there is precedent for requiring civil plaintiffs to serve information sheets with other papers. (See, e.g., Rule 3.221, Rules of Court (2020).)<br><br>This Committee laudably drafted—see discussion at page 13 of the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15, and the Judicial Council laudably approved, a cover sheet that tenants could use to declare financially related distress pursuant to the provisions of Assembly Bill 3088. We are aware that this Committee declined to recommend that a similar form be provided to mirror the declaration allowed for under the federal eviction moratorium order of the Center for Disease Control—see discussion at page 15, and we do not advocate here that this Committee reconsider that recommendation.<br><br>However, nothing prevents this Committee from recommending that an expanded cover sheet, or information sheet, be served on Defendants with Plaintiffs' | First, the committee notes that the suggestion of adding a rule that the plaintiff serve an information sheet to defendant along with the complaint and form UD-101 is beyond the scope of this proposal, which addresses form UD-105.<br><br>The committee agrees, though, that an information sheet relating to the unlawful detainer answer form is a good idea. However, this is a complex area of law, and an information sheet will take a substantial amount of time and effort to develop. There have not been the resources to do that at this point, although the committee has discussed developing such a form in the future as time and resources allow.<br><br>The committee also questions whether a Judicial Council form is the best way to provide information about swiftly evolving law relating to COVID-19 pandemic issues. New pages have been added to the California Courts Self-Help Center relating to the provisions of AB 3088 and landlords' and tenants' rights and responsibilities under it, with links to more information about both state and federal protections and legal resources. Putting links to the self-help center web page on the form, as has been done in |

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| | | | UD-101 complaint form that advises Defendants, in careful language, about the rights they may have and the defenses they may wish to assert. That same sheet could also direct them to appropriate resources to aid them in so responding, such as the courts' self-help web site, local navigator programs, or local legal aid organizations designated to provide assistance in this area. In this manner, such a sheet could work in tandem with the recommended changes to the form itself to ensure tenants invoke, in what has become a complex area of federal, state, and local initiatives, their rights without raising those concerns about titling the playing field in favor of those defenses—see, for example, the discussion at page 13 of the memorandum to the Judicial Council accompanying Circulating Order Number CO 20-15.<br><br>And no provision of law prevents the Judicial Council from adopting a more general statement to inform tenants that they may have other rights under state law, federal law and order, and local ordinances that they should consider seeking advice on and invoking—even as it carefully explains that the determination of whether any such rights in fact exist and apply to the tenant in question is up to the courts. In this regard, such a general statement would be no different in concept than the information provided by courts on the self-help website, see, e.g., https://www.courts.ca.gov/selfhelp-eviction.htm. And as with the contents of that self-help website, such a statement would here assist tenants in understanding those issues that they should raise with self-help centers, navigators, legal aid organizations, and pro bono programs in availing themselves of these rights. | item 3 on form UD-105, seems a better alternative for now, in part because the web pages can be revised significantly more quickly than council forms.<br><br>The committee agrees that such information would be similar to that on the web page, and so has provided a link to that page. |

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| | | | Taken together, our suggestions fit within the mission of CLA to promote fairness in the administration of justice and the rule of law by ensuring that tenants have every reasonable opportunity to be apprised of their rights. In an era in which we are all more conscious of systematic discrimination, it is important to keep in mind that lower income communities, and people of color, are particularly at risk of eviction due to COVID-19, and because of that discrimination, are also more susceptible to suffering from COVID-19 itself. [FN3. See, e.g., Letter from Professor Emeritus of Law Gary Blasi to Judicial Council at page 2, dated Sept, 16 2020, attached to the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15; see also, e.g., Kim Parker, Rachel Minkin, and Jesse Bennet, Economic Fallout from Covid-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), https://www.pewsocialtrends.org/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/.] [FN 4. See, e.g., Alan Gomez et al., An Unbelievable Chain of Oppression: America's History of Racism Was a Preexisting Condition for Covid-19, USA TODAY (Oct. 15, 2020), available at https://www.usatoday.com/in-depth/news/nation/2020/10/12/coronavirus-deaths-reveal-systemic-racism-united-states/5770952002/.]<br><br>By implementing these suggestions, this Committee can assist the Legislature, the Federal Government, and local governments in addressing the magnitude of the economic and public health crisis caused by COVID-19. At the same time, they do not tilt the balance struck between the interests of landlords and tenants in these various state, | |

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| | | | federal, and local initiatives. [FN 5. The Access to Justice Advisory Committee of CLA notes that some commentators to the recommendations of this Committee, as set out in the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15, remarked on the asymmetry of legal representation between landlords and tenants. (See, e.g., Letter from Professor Emeritus of Law Gary Blasi to Judicial Council at page 2, dated Sept, 16 2020, attached to the memorandum to the Judicial Council accompanying Circulating Order Number CO-20-15.) This reported disparity exacerbates the need for our recommendations to try to ensure symmetry between tenants and landlords in effectuating the goals of the Legislature, the federal government, and local governments.] | |
| 4. | California Legislators:<br>Hannah-Beth Jackson,<br>Scott Wiener,<br>Nancy Skinner,<br>Mark Stone,<br>David Chiu, &<br>Shirley Weber | NI | Thank you for the ongoing efforts you and your staff are devoting to the rapid implementation of AB 3088 (Chiu, Chap. 37, Stats. 2020). Last month, we wrote with comments about the new unlawful detainer Complaint form and cover sheet you proposed to implement. We emphasized the critical importance that the forms reflect the legislative intent behind AB 3088: to safeguard the health and well-being of millions of Californians by keeping them in their homes. We appreciated the changes you made, many of which incorporated elements of our recommendations.<br><br>As a follow up, you have now issued a proposed revision to the unlawful detainer Answer form that tenants use to tell the court their side of the story and explain why the court should not grant the landlord's request for an | The committee appreciates the comment. |

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| | | | eviction order. The purpose of this letter is to provide you with our comment on that proposal.<br><br>Overall, we applaud the plan to revise the Answer form. Pursuant to AB 3088, the federal CARES Act, and orders from the Center for Disease Control (CDC), California landlords now have additional requirements they must meet before they can evict their tenants. Similarly, California tenants have additional defenses that they may raise. The proposed revisions to the form generally make it easier for tenants, many of whom will not have the benefit of legal counsel, to identify and raise the protections that apply to their circumstances.<br><br>You specifically requested feedback on the following issues:<br><br>□ *Does the proposal appropriately address the stated purpose?*<br>Yes. As previously stated, we believe the proposed revised form will better assist tenants to invoke the protections that AB 3088, the CARES Act, and the CDC order provide.<br>□ *Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?*<br>We can see potential benefit and potential harm from adding such an affirmative defense. On the upside, including this specific defense will help tenants to | The committee appreciates the comment. |

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| | | | identify and raise it. On the downside, this specific defense is already implicitly included in the broader affirmative defense set forth at m(4)(a) of the proposed form. Addition of the specific defense where a tenant has not only submitted the declaration but also paid at least 25 percent of the rent might cause confusion by leading some tenants to conclude, erroneously, that they must always pay 25 percent of the rent in order to have a defense based on the declaration. On balance, it seems better to add the specific affirmative defense, but the form should make clear that tenants using this defense have until January 31, 2021 to pay this 25 percent if they have not been doing so all along.<br><br>□ *Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?*<br>The proposed revision to the Answer form appears to cover all of the major additional protections against eviction created by AB 3088, the CARES Act, and the CDC order. However, we believe that blank copies of both the AB 3088 declaration of COVID related financial hardship and the CDC declaration of COVID related financial hardship should be attached to the revised Answer form. That would help to ensure that eligible tenants have every opportunity to invoke the protections to which they are entitled under those laws. | The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date.<br><br>The committee declines this suggestion. It is outside the scope of the proposal, and would be a significant change requiring another circulation. In addition, the law provides the AB 3088 declaration should be provided to the landlord (1) only in cases based on nonpayment of rent and (2) within 15 days of service of a termination notice. Attaching it to the answer form would imply that it should be filed in all cases and that filing it after a UD action is filed, rather than providing to the landlord earlier, is the preferred manner of seeking protection under AB 3088. |

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| | | | | There is no basis in the CDC Order for the council to provide the declaration form as a state court form. |
| | | | □ *Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?* Either option would likely be fine, but we believe it is probably marginally better for the CDC declaration to be a standalone, as otherwise there is a small risk that tenants will overlook it. That said, our stronger recommendation is that a copy of the CDC declaration be added to the proposed Answer form, so that tenants can fill it out and submit it as part of their Answer. | The committee agrees; see new item 3o. |
| | | | □ *Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?* We believe it is probably marginally better for this defense to be standalone, so that tenants do not overlook it. | The committee agrees; see item 3p. |
| | | | □ *Are there other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m?* In general, it is concerning that a number of the items are listed under the heading "affirmative defenses," as this erroneously implies that the tenant bears the burden of proving them. For example, under AB 3088, a landlord has the legal duty to provide the tenant with 15 days' | In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer |

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| | | | notice to pay, quit, or return the declaration of COVID-19 related financial hardship. If the landlord does not provide such a notice, then the landlord has no legal right to an order for an eviction. In other words, this is an element of the prima facie case that the landlord must plead and prove unless, in response to the Complaint, the tenant admits that they are true. With this in mind, we are concerned that the placement of items m(1), m(2), 6(a), and 6(b) under the heading "affirmative defenses" could create confusion. The heading should instead read "affirmative and other defenses" or simply "defenses." Regardless, it is critical that the judicial officers adjudicating these cases understand that it is the plaintiff, not the defendant, who bears the burden of proof as to these issues. | or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |
| 5. | Disability Rights Education & Defense Fund<br>by Sydney Pickern<br>Staff Attorney | NI | Disability Rights Education & Defense Fund (DREDF) writes in response to the Judicial Council's Invitation to Comment SP20-07, *Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088*. We understand and appreciate that the Judicial Council has been required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. These forms are particularly critical in a pandemic when many tenants in crisis will be facing eviction without legal counsel. Thus, it is especially important to ensure that the forms are clear, easy to use, and allow tenants a meaningful opportunity to assert relevant defenses.<br><br>Below we address two of the Council's specific inquiries and offer additional suggestions. | The committee appreciates the comments. |

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| | | | **III**. [sic] **Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?**<br>Yes. As drafted, the Answer form does not reflect that AB 3088 applies the just cause protections of the Tenant Protection Act to all tenants subject to an action for unlawful detainer prior to February 1, 2021, regardless of the Tenant Protection Act's exemptions or length of tenancy. *See* Cal. Code Civ. Proc. § 1179.03.5. There should be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allows tenants to allege just cause protections if they are covered by the Tenant Protection Act. | A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.) |
| | | | In addition, the form should allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of rights under COVID-19 Tenant Relief Act of 2020 before September 30, 2020. | A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination. |
| | | | In addition, we suggest that an additional checkbox be added allowing tenants to state that the Plaintiff seeks to evict Defendant based on disability. The CDC Order specifically allows eviction when "based on a tenant, lessee, or resident…threatening the health or safety of other residents." 85 Feg.Reg. at 55294. Because disability-related behavior may be construed as threatening the health or safety of other residents and because tenants may not know | The committee declines to add an affirmative defense that "plaintiff seeks to evict defendant based on disability." There is already a defense based on discriminatory action. See item 3f. The committee is not interpreting the CDC Order as part of this proposal, and declines the suggestion to add an affirmative defense based on a landlord |

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| | | | they can request a reasonable accommodation to address disability-related behavior at any stage of an eviction proceeding, there should be a way for the Tenant to address this on the form.<br><br>Lastly, although the Council has previously indicated that section 3f includes evictions based on the denial of a reasonable accommodation request, a *pro se* litigant often may not know from the 3f language that this defense is included. We suggest that an additional checkbox be added allowing tenants to state that Plaintiff failed to provide reasonable accommodation.<br><br>**VI. Other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m**<br>Yes, the entire section should be retitled. Many of the items listed under "Affirmative Defenses" are actually part of plaintiffs' prima facie case, including service of the 15 day notice and notice of rights. Tenants who are represented by counsel can submit briefing explaining that calling an item an affirmative defense does not mean that the tenant bears the burden of proof. (*see Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756). But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants.<br><br>While this issue is not new to the Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel. Tenants who are not represented will not be able to explain | acting as expressly permitted under that order.<br><br>This suggestion is outside the scope of this proposal, which is focused on COVID-19 related affirmative defenses. The committee will consider the suggested addition in the future as time and resources allow.<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |

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| | | | to the court that the plaintiff has the burden to prove service of the required notices. Therefore this section should be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues.<br><br>**VII. Additional issues**<br>**A. Add reasonable accommodation language**<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics.<br><br>Because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176.<br><br>**B. Add a jury request box**<br>Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury. | The committee declined this request when developing the forms in September, and does so again. Although the statement 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 should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).)<br><br>This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* |

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| | | | **Conclusion**<br>While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance.<br><br>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. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. | (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |
| 6. | Family Violence Appellate Project<br>by Janani Ramachandran, J.D.<br>Housing and Employment Justice Program | NI | The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's Invitation to Comment number SP20-07, Revised Answer Form to Implement Assembly Bill 3088. Thank you for acting quickly to implement the complex new laws protecting tenants from eviction during the COVID pandemic. As discussed in our prior comment letter, these forms are particularly critical in a pandemic when many tenants in crisis will be facing eviction without legal counsel. This is especially critical for the most marginalized individuals impacted by the ongoing pandemic, including survivors of domestic violence facing impending homelessness. Thus, it is important to ensure that the forms are clear, easy to use, and allow tenants a meaningful opportunity to assert relevant defenses. | The committee appreciates the comments. |

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| | | | Because of FVAP's connection to the domestic violence community, we are uniquely positioned to assess the impact of the Judicial Council's proposed form changes on survivors of domestic violence. Accessibility of court forms is especially critical at a time when thousands of survivors may be going through eviction proceedings without counsel.<br><br>FVAP is the only nonprofit organization in California dedicated to representing domestic violence survivors in civil appeals for free. FVAP's goal is to empower abuse survivors through the court system and ensure that they, and their loved ones, can live in safe environments, free from abuse. FVAP represents low-income survivors who need to appeal dangerous trial court decisions that leave them at risk of ongoing abuse. Our appellate work includes cases where survivors are unlawfully evicted because of their status as a domestic violence survivor and because of abuse perpetrated against them. In addition to pursuing appeals, FVAP also provides legal advice and resources to attorney and non-attorney advocates throughout California who assist domestic violence survivors with housing issues. These individuals often express the fears, frustrations and concerns that their clients face while trying to maintain their current housing or find new housing that is affordable and safe.<br><br>Accessing and maintaining safe housing continues 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. [FN 1. See ACLU Women's Rights Project, Domestic Violence and Homelessness (2006), | |

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| | | | 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.] Over 90% of homeless women report having experienced domestic abuse or sexual violence in their lives, and over 50% of homeless women report that domestic violence was the immediate cause of their homelessness. [FN 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.] Survivors being evicted as a result of their abuser's behavior is unfortunately a common occurrence across California. For example, in many situations, landlords often discriminate against survivors by evicting them because they do not want to deal with the abuser's presence on their property or with repeated police presence resulting from the survivor's 911 calls or calls from concerned neighbors. Such forms of discrimination are often direct violations of existing state laws. In other instances, a survivor who has recently left an abusive relationship may not be able to pay the entirety of their rent if they have suffered job loss or reduced hours of work due to COVID-19. When faced with eviction due to domestic violence, or due to dual economic impacts of leaving an abusive relationship and COVID-19, survivors are often unaware of the presence of affirmative defenses they can include in their responses if they are not represented by counsel. This is why clear language describing the rights of survivors, especially additional | |

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| | | | protections to all renters based on AB 3088 and financial insecurities resulting from the pandemic, is critical.<br><br>Homelessness can be a precursor to additional violence because a survivor is at the greatest risk of violence when separating from an abusive partner. [FN 3. See id. at 431.] 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. [FN 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).] To further prevent homelessness among survivors and all Californians, and to fully effectuate the current protections available to them, we address the Council's specific inquiries and offer additional suggestions:<br><br>**I. Does the proposal appropriately address the stated purpose?**<br>The changes address the stated purpose in part by allowing defendants to raise defenses related to COVID-19 eviction protections. However as discussed further below, the form is confusing and can be improved for clarity.<br><br>**II. Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial** | See responses to specific suggestions below. |

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| | | | **obligations arising from the tenancy due during those months**?<br>Including it will help tenants to identify and raise the defense. However, it can also cause further confusion and harm without further informational language. This defense is already implicitly included in the broader affirmative defense at section m(4)(a) of the proposed form. Addition of the specific defense might cause confusion by implying that tenants must have paid 25% of the rent in order to have a defense regardless of timing. If the Council elects to add this defense, it should be certain that the form makes clear that tenants have until January 31, 2021 to pay the 25% of due rent.<br><br>**III. Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?**<br>Yes. As drafted, the Answer form does not make clear that AB 3088 applies the just cause protections of the Tenant Protection Act to all tenants, regardless of the Tenant Protection Act's exemptions or length of tenancy. There should be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allows tenants to allege just cause protections if they are covered by the Tenant Protection Act.<br><br>In addition, the form should allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of rights under COVID-19 Tenant Relief Act of 2020 before September 30, 2020. | The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date.<br><br>A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.)<br><br>A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, |

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| | | | **IV. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes. 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. [FN.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].] Thus, the CDC order prohibits all no-fault evictions in addition to nonpayment evictions. [FN 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.] It is also important to note that the CDC order protects tenants who | 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination.<br><br>The committee agrees that the affirmative defense should be separate; see new item 3p. |

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| | | | face eviction based on rental debt from before March 1, 2020.<br><br>A standalone affirmative defense that references the CDC protections should also 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.<br><br>**V. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes.<br><br>**VI. Other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m**<br>The entire section should be retitled. Many of the items listed under "Affirmative Defenses" are actually part of plaintiffs' prima facie case, including service of the 15-day notice and notice of rights. Tenants who are represented by counsel can submit briefing explaining that calling an item an affirmative defense does not mean that the tenant bears the burden of proof. (*see Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756). But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form | The committee declines the suggestion to add a specific advisory for legal advice in this one affirmative defense. The committee has, however, added to the instructions at the beginning of item 3 a link to the online California Courts Self-Help Center's page that provides information regarding evictions generally, which includes the link suggested here.<br><br>The committee agrees that the "other" defense should be separate from item 3m. See new item 3o.<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |

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| | | | "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants.<br><br>While this issue is not new to the Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel. Tenants who are not represented may not be able to explain to the court that the plaintiff has the burden to prove service of the required notices. Therefore, this section should be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues.<br><br>**VII. Additional issues**<br>**A. Revision of Section 2**<br>Section 2 of the Proposed Answer is confusing. The general denial paragraph should be separate so it is easy to see that it is a stand-alone option. The second section where tenants are required to separately respond to allegations should be revised and should include a checkbox where Defendant can assert that Plaintiff failed to serve the Mandatory Cover Sheet and Supplemental Allegations form.<br><br>This section should also be amended to break up responses to the Complaint and the Cover Sheet separately, instead of referring to them jointly in Item 2(b). Also, to avoid any confusion and to make clear that two separate documents are being referenced, the full title of the form *Complaint-Unlawful Detainer* (form UD-100) should be written out and italicized, consistent with the *Mandatory Cover Sheet and Supplemental* | In light of this and other similar comments, the committee has revised item 2, adding titles to each subpart and adding a checkbox where defendant can state that form UD-101 was not received.<br><br>The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited |

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| | | | *Allegations- Unlawful Detainer* (form UD-101) so that it is clear to Defendants that two separate forms are being referenced.<br><br>**B. Add reasonable accommodation language**<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics.<br><br>People with disabilities, including disabilities resulting from domestic violence, will face a myriad of additional barriers to timely assertion of their rights during the pandemic. Thus, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. [FN 7. 2 C.C.R. §12176; 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.]<br><br>**C. Add an advisement of other protections for domestic violence survivors**<br>As explained earlier, survivors of domestic violence face additional barriers to safe housing, and timely assertion of their rights during the pandemic is critical. Therefore, in addition to the defenses stated under Items 3(j) and | only to those cases in which the complaint is filed on form UD-100.<br><br>The committee declined this request when developing the forms in September, and does so again. Although the statement 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 should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).)<br><br>This suggestion is outside the scope of this proposal, because it is not related to AB 3088 or specific to COVID-19 eviction issues. To the extent the requested advice regarding |

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| | | | 3(k), 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. [FN 34 U.S.C. § 12491.]<br><br>**D. Add a jury request box**<br>Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury.<br><br>**Conclusion**<br>While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance, especially for those populations most vulnerable in our current pandemic such as domestic violence survivors. 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 additions and clarifications noted above will mitigate additional barriers for survivors of abuse and their families to remain in safe housing, and avoid being unlawfully evicted during the pandemic. We appreciate your efforts to make these forms as accessible and comprehensive as possible in these challenging | domestic violence protections under federal law should be included in an information sheet regarding responding to unlawful detainers generally, the committee will consider it in the future as time and resources allow.<br><br>This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |

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| | | | times. Thank you for your consideration of these comments. | |
| 7. | Sheldon Fleming<br>Law Offices of Sheldon J. Fleming | NI | *<br>To preface my comments, I am an attorney who specializes in commercial evictions (I do not do residential evictions at all). As you are probably aware, there is a huge critical distinction in the law between a residential eviction and a commercial eviction. Numerous defenses in evictions only apply to residential and not to commercial tenancies.<br><br>The new generic answer form that is being circulated does not make that distinction, and therefore is very misleading to the public and also most importantly to judges.<br><br>My first comment is to part 3.A., the first affirmative defense. The parenthetical at the start of it should be amended to read (Nonpayment of rent only in residential tenancy only)". The California Supreme Court has unanimously held for several decades now that a habitability defense is only applicable in residential tenancies. It does not apply in a commercial settings. See Green v. Superior Court (1974) 10 Cal.3d 616, 629, 631, 637.<br><br>A similar comment would be to add a parenthetical to the start of the new affirmative defenses 3.L. and 3m.. The parenthetical should say "(Residential tenancy only)". The legislation just passed applies only to residential tenancies and not to commercial tenancies. And your own statement about the legislation specifically says it's dealing with residential unlawful detainer actions only. Without putting in that explanatory parenthetical you are misleading commercial tenants into their rights as well as misleading | The committee appreciates the comments.<br><br>This suggestion is outside the scope of this proposal but will be considered in the future revisions to this form.<br><br>The new defenses have been revised in light of this comment. |

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

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| | | | judges what the Legislature passed. All this confusion should be avoided. | |
| 8. | Legal Aid Foundation of Los Angeles<br>by Joshua R. Christian, Esq. | NI | The Legal Aid Foundation of Los Angeles (LAFLA) writes to recommend certain changes to revised form UD-105, "Answer-Unlawful Detainer."<br><br>Pursuant to recently enacted Assembly Bill 3088 ("AB 3088" or "COVID-19 Tenant Relief Act"), the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020, the Judicial Council adopted a new form UD-101 for unlawful detainer plaintiffs. The form reflects changes to unlawful detainer law related to the ongoing coronavirus pandemic. The newly adopted form prompted objection from tenants' advocates, who noted that the form amounted to a detailed "how-to" guide for plaintiffs while leaving defendants to navigate complicated new defenses without such special assistance.<br><br>The Judicial Council quickly released a revised form UD-105 in response to advocates' concerns, intended to outline newly available unlawful detainer defenses in a manner similarly detailed to the UD-101 cover sheet. Form UD-105 was released prior to public comment in order to be available to defendants beginning October 5, 2020. The public has now been invited to submit comments and propose revisions to the already-released form.<br><br>**RESPONSE TO INVITATION FOR COMMENT**<br>*1. Does the proposal address the stated purpose?*<br>The Council's revisions allow defendants a greater opportunity to respond to individual allegations in the UD-101 in a legally appropriate way. There are, however, | The committee appreciates the comments.<br><br>See responses to specific suggestions below. |

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| | | | changes that can make the form more comprehensive and avoid confusion for tenants, particularly self-represented tenants.<br><br>*2. Would it be appropriate to add an affirmative defense that defendant has been provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from tenancy due during those months?*<br>This change would be ill-advised as written. A common confusion LAFLA encounters among landlords and tenants alike is the misimpression that 25% of rent must be paid on a monthly basis between September 2020 and January 2021 to avoid eviction. If this affirmative defense is to be specifically described on the UD-105, such a description must make absolutely clear that the 25% payment described is due in full by January 31, 2021, not payable monthly. Defendants may otherwise be misled to their detriment and mistakenly believe they are not protected under Assembly Bill 3088 because they did not make monthly payments. This specific affirmative defense is also included on the form under the broader item (m)(4)(a).<br><br>*3. Are there additional affirmative defenses that may be made under AB-3088 or federal eviction law that should be added to item 3 on the form?*<br>Yes. The current form focuses heavily on protections against unlawful detainer actions arising from nonpayment of rent. However, AB 3088, the emergency order by the federal Centers for Disease Control and Prevention ("CDC Order"), and many local moratoria also include | The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date.<br><br>A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just- |

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| | | | prohibitions and limitations on evictions for other reasons. For instance, AB 3088 extends "just cause" eviction protections from the Tenant Protection Act of 2019 to all residential tenants; the CDC Order prohibits evictions prior to December 31, 2021 for any "no fault" reason; and many local moratoria further regulate evictions based on the presence of unauthorized occupants or pets, nuisance, failure to provide access to the rental unit, and other "no fault" reasons. Current Form UD-105, however, does not provide an opportunity for tenants to articulate defenses if their landlord violates any of these prohibitions.<br><br>To that end, we recommend that the Form UD-105 include as a new paragraph "3(n)" the following language, which mirrors the language used in current paragraphs 3(h) and 3(m):<br><br>(n) Plaintiff's demand for possession is based on a reason other than non-payment of rent or other financial obligations and (*check all that apply*):<br>(1) Plaintiff's demand for possession is not in compliance with the COVID-19 Tenant Relief Act of 2020 (Code Civ. § 1179.03.5) because:<br>(a) Plaintiff lacks just cause for termination of tenancy as defined in subdivision (b) or Section 1946.2 of the Civil Code, and/or;<br>(b) Plaintiff's demand for possession is based on Plaintiff's intent to demolish or substantially remodel the property but such demolition or remodeling is not necessary to maintain compliance with health, safety, or habitability laws (Civ. Code § 1179.03.5(A)(3)(ii)(II)). | cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.)<br><br>In addition, the affirmative defense of having provided a declaration under the CDC Order has been removed from the section limiting it to cases for nonpayment of rent. See item 3p. |

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| | | | (2) Plaintiff's demand for possession is based on a no-fault reason and Defendant provided a 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 F.R. 55297) (*describe when and how provided*)<br>(3) Plaintiff's demand for possession is not in compliance with a local COVID-19-related ordinance regarding evictions for reasons other than non-payment of rent (*briefly state facts describing this in item*). | |
| | | | As a separate matter, the form should also allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of Rights under the COVID-19 Tenant Relief Act of 2020 before September 30, 2020, as required by CCP § 1179.04(a). | A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination. |
| | | | *4. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?*<br>Yes. | The committee agrees that the affirmative defense should be separate; see new item 3p. |
| | | | *5. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding* | |

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| | | | *evictions as a standalone affirmative defense (rather than as part of item 3m)?*<br>Yes.<br><br>*6. Other revisions that would be appropriate to make to the affirmative defenses in items 3l or 3m.*<br>We are concerned that designating various items as "affirmative defenses" will cause unnecessary confusion to courts and litigants, given that several of those items are actually elements of the prima<br>facie unlawful detainer case. For instance, a plaintiff carries the burden of proving service of a Notice of Rights and a Fifteen-Day Notice to Pay Rent or Quit under the COVID-19 Tenant Relief Act. Form UD-105 describes failure to do so as an affirmative defense, implying that service of these notices may be presumed by the court until a defendant carries its burden to prove otherwise.<br><br>This section should be entitled "Defenses" or "Affirmative and Other Defenses" to make it clear that a defendant does not bear the burden of proof for many of the issues included.<br><br>**OTHER CONCERNS**<br>1. *The Council should add an option for a tenant to request jury trial.*<br>Rapid changes to the unlawful detainer procedure during the coronavirus pandemic are forcing defendants to manage a large volume of complicated paperwork in order to preserve their legal rights. The danger is greater than ever that defendants will neglect to assert their constitutional right to demand a jury trial while they struggle with newer, more complex protections. The Council should add a box | The committee agrees that the "other" defense should be separate from item 3m. See new item 3o.<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials.<br><br>This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider |

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| | | | to the Answer form which a tenant can easily check off to assert their right to have their case tried before a jury.<br><br>2. *Section 2 must be clarified.*<br>The integration of the UD-100 and UD-101 allegations separately into Section 2 along with the options for specific denial, general denial, and denial for lack of information creates a morass of legal terms, form titles, and form numbers that will severely confuse unrepresented defendants. This section could be clarified and simplified in several ways.<br><br>First, all references to either the UD-100 or UD-101 forms in this section should utilize the form's whole title. Thus, each mention of "the complaint" should be replaced with the full "*Complaint – Unlawful Detainer*" to correspond to "*Mandatory Cover Sheet and Supplemental Allegations – Unlawful Detainer*" as is used to refer to Form UD-101. This will clarify for unsophisticated defendants that two separate forms are being referenced.<br><br>For the same reason, responses to the Complaint and the Cover Sheet should be addressed separately, rather than all being contained as subsections to Item 2(b). The Council should consider replacing items 2(b)(3) and (4) with new items 2(c)(1) and (2), respectively.<br><br>The form should also include a checkbox where a defendant can assert that the Plaintiff failed to serve the Form UD-101, without declaring failure to serve as an affirmative defense. | the suggestion in the future as time and resources permit.<br><br>In light of this and other similar comments, the committee has revised item 2.<br><br>The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited only to those cases in which the complaint is filed on form UD-100.<br><br>The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled.<br><br>A checkbox has been added. |

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| | | | 3. *The form should contain language informing tenants with disabilities they are entitled to reasonable accommodations.*<br>Accommodations for individuals with disabilities have never been as essential or as high-stakes as they are during the coronavirus pandemic. Language in the UD-105 must specifically advise defendants that they are entitled to reasonable accommodations and may request one at any time during the unlawful detainer process, including post-judgment. 2 C.C.R. § 12176. At a time when matters as simple as courthouse access are problematic even for the general public, defendants with disabilities must not face default judgment or adverse court action simply because they do not know how to assert their rights under law.<br><br>**CONCLUSION**<br>The global coronavirus pandemic creates new, unprecedented legal complications for landlords and tenants on a daily basis. It also compounds well-known injustices that have pervaded the eviction system for decades. Particularly in this high-stakes area of litigation where most defendants are self-represented and most plaintiffs represented by counsel, it could not be more essential that the materials promulgated by the Judicial Council be both clear and comprehensive.<br><br>The proposed changes should be adopted to prevent tenants from misunderstanding, forfeiting, or neglecting to assert their rights under law. These include not only rights under newly enacted coronavirus relief laws, but also basic rights | The committee declined this request when developing the forms in September, and does so again. Although the statement 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 should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).) |

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| | | | like the right to a jury trial or the right to reasonable accommodations of disabilities, which could easily be lost in the shuffle.<br><br>We thank the Judicial Council for their swift action to address concerns raised in September with the disparity between the UD-101 and UD-105 court forms, and for continuing to consider advocates' feedback as we all adjust to these rapid changes in the legal landscape. | |
| 9. | Ngoc Nguyen<br>Self-Help Services Attorney<br>Superior Court of Orange County | NI | * My name is Ngoc Nguyen and I am the Self-Help Services attorney at Orange County Superior Court who is handling all eviction matters. [ ]<br><br>Proposed Additional Defenses<br>1. A revision for UD-105 could then be that there could be an additional defense added that after the landlord served them with UD-101, the landlord did not give them the sufficient allowable time to respond to it. This is in anticipation of the tenant having to file a motion to dismiss the default to be able to address the allegations in UD-101 for the first time by filing a proposed Answer. The tenant could then mark a box that addressed this.<br><br>2. Under section (m), it would be beneficial to tenants (especially self-represented tenants) to have a box to mark off these additional defenses:<br><br>a. "Plaintiff did not provide a (blank line for language) version since the rental agreement<br>was negotiated in (blank line for same language)." And<br><br>b. "Plaintiff did not give the general notice on or before 9/30 if applicable." | The committee declines this suggestion. If a motion to dismiss a default is filed on the grounds that the UD-101 was not served with sufficient time to answer it, then that ground should be raised in the motion, not the proposed answer.<br><br>The committee agrees; see item 3m(4).<br><br>A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has |

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| | | | | been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination. |
| 10. | Public Advocates Inc.<br>by Shajuti Hossain<br>Law Fellow<br>& Richard Marcantonio<br>Managing Attorney | NI | Public Advocates Inc. writes in response to the Judicial Council's Invitation to Comment SP20-07, *Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088*. Thank you for incorporating some of our prior suggestions and for this second invitation to comment, particularly on Unlawful Detainer Form 105.<br><br>The confusion around COVID-19-related eviction protections has only grown since we submitted our previous comment letter to the Council (attached). That confusion, created by the simultaneous operation in California of AB 3088 and the federal CDC Order prohibiting many evictions, has extended beyond renters and landlords, and is regrettably now leading some of our courts astray, as well.<br><br>In particular, the issuance earlier this month of a "Frequently Asked Questions" document (the CDC FAQ) was widely misrepresented, including in the national press, as limiting the scope of the CDC Order. Specifically, the Washington Post incorrectly stated "that landlords nationwide are free to start the eviction process while the federal moratorium is active." | The committee appreciates the comments.<br><br>The committee declines to respond to arguments regarding the interpretation of the CDC Order, because the interpretation of the applicability of this order in California is outside the purview of this committee. |

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| | | | In fact, the CDC Order has not changed, and "[t]his non-binding guidance document" (as the FAQ explicitly states in its first words) in no way limits the clear obligations of the California courts to enforce it. After the release of the CDC FAQ, it remains the case -- as was true before -- that the submission of a declaration under the CDC Order prohibits any action by the landlord to evict that tenant until January 1, including the filing of an unlawful detainer complaint.<br><br>All that has changed with any legal bearing is the announcement of the U.S. Department of Justice that, as a matter of its prosecutorial discretion, it will not seek criminal penalties against landlords who initiate eviction proceedings prior to December 31. But our courts enjoy no such discretion. Their obligation -- if they allow the filing of such void complaints at all -- is to dismiss them outright. Instead, we are aware of at least one case in which a Superior Court judge has deprived a tenant of the full protections of the CDC Order. While correctly acknowledging that the CDC Order is in force in California and that the tenant in that case was entitled to its protections, that court failed to dismiss the case, instead setting a trial date after Dec. 31. securing that landlord a place at the head of the line. In effect, the court abetted and rewarded a landlord's unlawful filing of a UD action.<br><br>In light of this ongoing state of confusion, even in the minority of cases in which tenants have legal representation, we again urge the Judicial Council to enact a temporary, narrowly-tailored Emergency Rule, as requested in our attached letter of September 17. | The proposal for an emergency rule is outside the scope of this proposal. In addition, this suggestion was considered and rejected in September as beyond the purview of this committee. |

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| | | | Below we address the Council's specific inquiries and offer additional suggestions on UD-105.<br>**Question 1: Does the proposal appropriately address the stated purpose?**<br>The Council's proposed changes address the stated purpose in part by allowing defendants to raise defenses related to COVID-19 eviction protections; however, as discussed further below, the form remains confusing and should be improved for clarity. | See responses to specific suggestions below. |
| | | | Additionally, we note that item 3(h), noncompliance by the landlord with the Tenant Protection Act, is incorrectly including under the heading "affirmative defenses." In fact, it is an element of the landlord's case, and the landlord's burden to prove, that the tenancy was properly terminated. A notice of termination that does not comply with the Act is insufficient to carry that burden. Accordingly, 3(h) should be removed from the list of affirmative defenses and made its own numbered section. This section should include a prompt to provide additional facts on an attachment. (We also note that a typographical error currently refers the tenant to the wrong subsection, (3(m) instead of 3(o), to provide those additional facts.) | Changes to item 3h or creation of a new section of the form are outside the scope of this proposal. However, the title of item 3 has been revised in light of similar concerns raised about some of the new defenses.<br>The error has been corrected. |
| | | | **Question 2: Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months**?<br>No, this defense is already implicitly included in the broader affirmative defense at section 3(m)(4)(a) of the | The committee disagrees that the affirmative defense that the minimum rent has been paid |

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| | | | proposed form. Adding a more specific defense will cause confusion by implying that tenants must have already paid 25% of the rent in order to have a defense, regardless of timing. Section 1179.03(g)(2)(B) of the Code of Civ. Proc. provides that tenants need not pay 25% of their rent on a monthly basis, but instead may make their payment of 25% of the rent owed for the period September 1, 2020 through January 31, 2021 at any time before January 31. | is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense. is applicable only in cases filed after that date. |
| | | | **Question 4: Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes, because the CDC Order covers rent that was owed *before* March 1, 2020 up until December 31, 2020 while 3(m) only refers to nonpayment of rent due *between* March 1, 2020 and January 31, 2021. | The committee agrees and has moved the item. |
| | | | **Question 5: Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?**<br>There should be one standalone "other" defense solely under *local* COVID-19-related eviction ordinances. The reason for limiting it to local ordinances is that they may cover rent owed outside of the period March 1, 2020 to January 31, 2021, and may provide protections and requirements that differ from those of AB 3088. The defense under "other" violations of the AB 3088 should remain under 3(m). | The committee declines this suggestion. There is already a separate affirmative defense for violation of local ordinances. See item 3g. |

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| | | | **Question 6: Are there other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m?**<br>Yes, the entire section should be revised to ensure that items listed under "Affirmative Defenses" do not include elements of plaintiffs' prima facie case, such as service of the 15-day notice and notice of rights. While this issue is not new to the Answer form, it is particularly confusing during the current pandemic when large numbers of tenants will face eviction proceedings without legal counsel. Tenants who are not represented will not be able to explain to a court that is overwhelmed with a deluge of eviction cases that the plaintiff has the burden to prove service of the required notices. | In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action, but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |
| | | | **Additional issues**<br>A. Revision of Section 2<br>Section 2 of the Proposed Answer is confusing. The general denial paragraph should be clearly separated as a stand-alone option. The second section where tenants are required to respond separately to allegations should be revised and should include a checkbox where tenants can assert that the landlord failed to serve the Mandatory Cover Sheet and Supplemental Allegations form. | In light of this and other similar comments, the committee has revised item 2. The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. And the requested checkbox has been added. |
| | | | B. Add reasonable accommodation language<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. | The committee declined this request when developing the forms in September, and does so again. Although the statement 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 |

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| | | | Because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are even more critical than ever. Therefore, the form should include a statement advising people with disabilities of their right to request any reasonable accommodation at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176.<br><br>C. Add a jury request box<br>Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury. | accommodations from a landlord should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).)<br><br>This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |
| 11. | Public Law Center<br>by Ugochi Anaebere-Nicholson<br>Directing Attorney, Affordable Housing and Homelessness Prevention Unit | NI | Public Law Center writes in response to the Judicial Council's Invitation to Comment SP20-07, *Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088*. We understand and appreciate that the Judicial Council has been required to act quickly to implement the complex new laws protecting tenants from eviction during the unprecedented COVID-19 pandemic. The proposed changes to the Judicial Council forms for UD complaints and answers, respectively, are particularly critical in a pandemic when many tenants in crisis will be facing eviction without legal counsel. Approximately 60-80% of | The committee appreciates the comment. |

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| | | | the tenants in our jurisdiction of Orange County proceed in eviction court without legal counsel, while approximately 90% of the landlords who appear in eviction court have legal counsel. Further, many of the tenants with actions in our courts in Orange County are monolingual in a language other than English. Thus it is especially important to ensure that the forms are clear, easy to use, and provide tenants with a meaningful opportunity to assert relevant defenses.<br><br>Below we address the Council's specific inquiries and offer additional suggestions.<br><br>**I. Does the proposal appropriately address the stated purpose?**<br>The changes address the stated purpose in part by allowing defendants to raise defenses related to COVID-19 eviction protections, however as discussed further below, the form is confusing and can be improved for clarity.<br><br>**II. Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months**?<br>This addition could be helpful or harmful. Including it will help tenants to identify and raise it, but it could also cause confusion. This defense is already implicitly included in the broader affirmative defense at section m(4)(a) of the proposed form. Addition of the specific defense might cause confusion by implying that tenants must have paid 25% of the rent in order to have a defense regardless of | See responses to specific suggestions below.<br><br>The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment |

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| | | | timing. If the Council elects to add this defense, it should be certain that the form makes clear that tenants have until January 31, 2021 to pay. | can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date. |
| | | | **III. Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?**<br>Yes. As drafted, the Answer form does not reflect that AB 3088 applies the just cause protections of the Tenant Protection Act to all tenants, regardless of the Tenant Protection Act's exemptions or length of tenancy. There should be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allow tenants to allege just cause protections if they are covered by the Tenant Protection Act. | A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.) |
| | | | In addition, the form should allow Defendants to allege that Plaintiff failed to provide Defendant with the required Notice of rights under COVID-19 Tenant Relief Act of 2020 before September 30, 2020. | A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination. |
| | | | **IV. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes. | The committee agrees that the affirmative defense should be separate; see new item 3p. |

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| | | | **V. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes.<br><br>**VI. Other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m**<br>Yes, the entire section should be retitled. Many of the items listed under "Affirmative Defenses" are actually part of plaintiffs' prima facie case, including service of the 15 day notice and notice of rights. Tenants who are represented by counsel can submit briefing explaining that calling an item an affirmative defense does not mean that the tenant bears the burden of proof. (*see Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756). But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants.<br><br>While this issue is not new to the Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel. Tenants who are not represented will not be able to explain to the court that the plaintiff has the burden to prove service of the required notices. Therefore this section should be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues. | The committee agrees that the "other" defense should be separate. See new item 3o.<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |

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| | | | **VII. Additional issues**<br>**A. Revision of Section 2**<br>Section 2 of the Proposed Answer is confusing. The general denial paragraph should be separate so it is easy to see that it is a standalone option. The second section where tenants are required to separately respond to allegations should be revised and should include a checkbox where Defendant can assert that Plaintiff failed to serve the Mandatory Cover Sheet and Supplemental Allegations form. | In light of this and other similar comments, the committee has revised item 2. The general denial now has a separate title. The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. And the requested checkbox has been added. |
| | | | This section should also be amended to break up responses to the Complaint and the Cover Sheet separately, instead of referring to them jointly in Item 2(b). Also, to avoid any confusion and to make clear that two separate documents are being referenced, the full title of the form *Complaint-Unlawful Detainer* (form UD-100) should be written out and italicized, consistent with the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101) so that it is clear to Defendants that two separate forms are being referenced. | The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited only to those cases in which the complaint is filed on form UD-100. |
| | | | **B. Add reasonable accommodation language**<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics.<br><br>Because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with | The committee declined this request when developing the forms in September, and does so again. Although the statement 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 should be included in an information sheet regarding |

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| | | | disabilities facing eviction are particularly critical at this time. Therefore, the form should include an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. | unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).) |
| | | | **C. Add a jury request box**<br>Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury. | This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit |
| | | | **D. Include an information sheet and provide translation of the documents in threshold languages, such as Spanish, Vietnamese, Chinese, Tagalog**<br>Because much of the information contained on the UD 105 Answer (Proposed) incorporates affirmative defenses of AB 3088, and if the proposed amendments by advocates are adopted, of other existing state laws, it is important to ensure that pro per tenants understand how to complete the form. Accordingly, an information sheet would be helpful. In our practice, we use many of the Judicial Council information sheets, such as in the cases of domestic violence and elder abuse restraining order cases, to help tenants understand how to complete the initial filings for | The committee acknowledges that an information sheet for use with the unlawful detainer answer form would be helpful, and development of such a form is among its long-term goals. It will be developed as time and resources permit. Because much of the law under AB 3088 will apply only for a few months, development of information and links to resources on the self-help web page at courts.ca.gov seems a more effective way |

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| | | | those types of cases. We believe that the form, UD-105, would benefit from an information sheet since so much of the form is new.<br><br>Additionally, we would recommend that the Judicial Council provide translated version of the forms that can be used by pro pers to complete and then transfer the information onto the English version of the UD-105 before filing the documents with the court.<br><br>**Conclusion**<br>While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. 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. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. | to provide evolving information for defendants. See link at item 3 of the form.<br><br>The committee will recommend that staff request that this form be translated under the council protocols for translation of forms. |
| 12. | Braz Shabrell<br>Deputy City Attorney<br>Oakland, CA | AM | I am writing to provide feedback on the revised Answer form (UD-105). I support the Council's efforts to make the form more accessible and comprehensive for tenants, who are by and large the intended beneficiaries of many of the new protections recently passed into law.<br><br>I have four main points of feedback:<br>1) I am concerned that there will be confusion between the Mandatory Cover Sheet and the complaint (¶ 2). | The committee appreciates the comments.<br><br>Item 2 has been revised to title which subparts apply to the form UD-101 and which apply to the complaint. |

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

## SP20-07

**Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088** (Revise form UD-105)

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

| | Commenter | Position | Comment | Committee Response |
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| | | | 2) The heading of ¶ 3 is slightly misleading. In unlawful detainer litigation, there is a marked distinction between "affirmative defenses," which are the defendant tenant's burden to establish, and defenses which are merely refuting plaintiff's ability to establish their cause of action. Because not all of the defenses listed in ¶ 3 are in fact "affirmative defenses," I would recommend changing the wording to avoid confusion around burden of proof. | In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |
| | | | 3) I would recommend potentially changing the wording of ¶ 3h. to mirror that of ¶ 3g., to say that "Plaintiff's demand for possession violates the Tenant Protection Act" rather than "Plaintiff's demand for possession is subject to." Defendant should be permitted to plead broadly without being required to allege whether plaintiff's demand is or is not subject to the law. | This suggestion is outside the scope of this proposal but will be considered in the future as time and resources permit. |
| | | | 4) Finally, as a general matter, I would encourage the Council to consider condensing the Answer form however possible as it is currently quite long and will likely be unwieldy for many tenants, a significant percentage of whom are unrepresented. I also have concerns about the fact pleading requirements, as notice pleading should be sufficient. | At this time, the committee declines to remove any of the defenses from the form. If a defense or objection is not listed, a self-represented tenant may not know to raise it. Other suggestions for ways to condense the form are welcome and will be considered in future revisions. As to the fact pleading requirement, the committee notes that facts must be pled to support affirmative defenses; notice pleading is not sufficient. |
| 13. | Superior Court of San Diego County<br>by Mike Roddy | A | • *Does the proposal appropriately address the stated purpose?* | The committee appreciates the comments. |

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

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| | Executive Officer | | Yes. Form UD-105 will assist defendants, and especially self-represented defendants, in being able to more specifically respond to the new allegations in form UD-101.<br><br>• *Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months?*<br>Yes. This would be appropriate, as this would be a defense per CCP 1179.03(g)(2)(B).<br><br>• *Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?*<br>Perhaps that plaintiff did not serve the "Notice from the State of California" required by CCP 1179.04.<br><br>• *Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?*<br>Yes. Since 3m concerns affirmative defenses under AB 3088, it would be appropriate to have the CDC Order as a standalone affirmative defense. If the CDC Order is made a standalone affirmative defense, it is recommended the federal CARES Act defense, currently in 3m (6), also be stated as a standalone affirmative defense, or that the federal defenses be stated together in a separate item, rather than as part of item 3m. These federal law protections are | The committee agrees; new item 3m(6)(b) has been added.<br><br>The committee agrees; see new item 3m(1).<br><br>The committee agrees; see item 3p (for the CDC order) and item 3q (for the other federal defense). |

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

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| | | | separately alleged on form UD-101, so it would be consistent to separately state them on form UD-105 as well. This would also aid the judicial officer reviewing the case and assist with obtaining statistics.<br><br>• *Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?*<br>These are appropriately part of item 3m, as they are COVID-19 affirmative defenses that relate to the other defenses listed in item 3m. There is already a standalone "other" affirmative defense stated in item n, so a second standalone "other" affirmative defense may confuse the parties.<br><br>No additional Comments. | The committee disagrees; AB 3088 and local ordinance protections go beyond unlawful detainer cases for nonpayment of rent, which item 3m is limited to. The "other" defense is now in item 3o. |
| 14. | Western Center on Law & Poverty<br>by Madeline Howard<br><br>Jointly with:<br>California Rural Legal Assistance Foundation<br>by Brian Augusta | NI | Western Center on Law & Poverty writes in response to the Judicial Council's Invitation to Comment SP20-07, *Unlawful Detainers: Revised Answer Form to Implement Assembly Bill 3088*. We appreciate that the Judicial Council has been required to act quickly to implement the complex new laws protecting tenants from eviction during the COVID-19 pandemic. As discussed in our prior comment letter, these forms are particularly critical when many tenants will be facing eviction without legal counsel during a global public health crisis. Thus it is especially important to ensure that the forms are clear, easy to use, and allow tenants a meaningful opportunity to assert relevant defenses. | The committee appreciates the comments. |

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

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| | | | Below we address the Council's specific inquiries and offer additional suggestions.<br><br>**I. Does the proposal appropriately address the stated purpose?**<br>The changes address the stated purpose in part by allowing tenants to raise defenses related to COVID-19 eviction protections. However, as discussed further below, the form is confusing and can be improved for greater clarity.<br><br>**II. Would it be appropriate to add an affirmative defense that defendant has provided a declaration of financial distress covering all months between September 1 and January 31 that are at issue in the action and has paid 25 percent of rent or other financial obligations arising from the tenancy due during those months**?<br>This addition could be helpful or harmful. Including it will help tenants to identify and raise it, but it could also cause confusion. This defense is already implicitly included in the broader affirmative defense at section m(4)(a) of the proposed form. Addition of the specific defense might cause confusion by implying that tenants must have paid 25% of the rent in order to have a defense regardless of timing. If the Council elects to add this defense, the language should be tailored to clarify that tenants have until January 31, 2021 to pay.<br><br>**III. Are there additional affirmative defenses that may be made under AB 3088 or federal eviction law that should be added to item 3 on the form?** | See responses to specific suggestions below.<br><br>The committee disagrees that the affirmative defense that the minimum rent has been paid is implicit in the defense that a declaration of COVID-19–related distress has been provided. The committee agrees with the concern that the affirmative defense clearly state that the 25 percent minimum payment can be made on or before January 31, 2021. New item 3m(6)(b)) states that and notes that the defense is applicable only in cases filed after that date. |

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

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| | | | Yes. As drafted, the Answer form does not reflect that AB 3088 applies the just cause protections of the Tenant Protection Act to all tenants, regardless of the Tenant Protection Act's exemptions or the length of tenancy. *See* CCP §1179.03.5(a)(3). There should be an additional checkbox allowing tenants to state that the landlord did not state just cause for eviction. The current language of the form only allows tenants to allege just cause protections if they are covered by the Tenant Protection Act.<br><br>In addition, the form should allow Defendant to allege that Plaintiff failed to provide the Notice of Rights required by CCP §1179.04 before September 30, 2020.<br><br>**IV. Would it be appropriate to have the affirmative defense of having served a declaration under the Centers for Disease Control and Prevention's temporary eviction moratorium order (see Link C) as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes.<br><br>**V. Would it be appropriate to have the affirmative defense of "other" violation of the COVID-19 Tenant Relief Act of 2020 or a local COVID-19–related** | A new defense that the plaintiff lacks just cause for a demand for possession has been added at item 3n, with the note that it is only applicable for cases filed before February 1, 2021. (After that date, cases subject to just-cause provisions of the Tenants Protection Act can continue to use item 3h for this defense.)<br><br>A new defense that plaintiff failed to provide the notice of rights under section 1179.04 has been added at item 3m(1). The defense does not reference "before September 30" because that deadline only applies to tenants who did not pay rent at some point between March 1, 2020 and August 31, 2020. For other tenants, the only requirement is that it be provided before the notice of termination.<br><br>The committee agrees; see new item 3p. |

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| | | | **ordinance regarding evictions as a standalone affirmative defense (rather than as part of item 3m)?**<br>Yes.<br><br>**VI. Other revisions that it would be appropriate to make to the affirmative defenses in items 3l or 3m**<br>The entire "Affirmative Defenses" section should be retitled. Many of the items listed under "Affirmative Defenses" are actually part of Plaintiffs' prima facie case, including service of the 15 day notice required by AB 3088. Tenants who are represented by counsel can submit briefing explaining that calling an item an affirmative defense does not mean that the tenant bears the burden of proof. *See Rental Housing Assn. of Northern Alameda County v. City of Oakland* (2009) 171 Cal.App.4th 741, 756. But unrepresented tenants will not be able to make these arguments effectively or be familiar with the underlying law. Titling this section of the form "Affirmative Defenses" causes unnecessary confusion and will be especially harmful for unrepresented tenants.<br><br>While this issue is not new to the revised Answer form, it is particularly concerning during the current pandemic when even more tenants will face eviction without legal counsel. Tenants who are not represented will not be able to explain to the court that the Plaintiff has the burden to prove service of the required notices. Therefore this section should be titled "Defenses" or "Affirmative and other Defenses" to make it clear that the Defendant does not bear the burden of proof for many of these issues. | The committee agrees; see new item 3o.<br><br>In light of this and other similar comments, the committee has retitled item 3 as "Defenses and Objections." (Objections based on a plaintiff's failure to state a prima facie case may be brought either by demurrer or by answer. See § 430.10.) The committee notes that to the extent a plaintiff has stated the elements of the cause of action but the tenant wants to deny those statements, item 2 is where defendant should be making such denials. |

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| | | | **VII.Additional issues**<br><br>**A.Revision of Section 2**<br>Section 2 of the Proposed Answer is confusing. The general denial paragraph should be separate so it is easy to see that it is a stand alone option. The second section where tenants are required to separately respond to allegations should be revised and should include a checkbox where Defendant can assert that Plaintiff failed to serve the Mandatory Cover Sheet and Supplemental Allegations form.<br><br>This section should also be amended to break up responses to the Complaint and the Cover Sheet separately, instead of referring to them jointly in Item 2(b). Also, to avoid any confusion and to make clear that two separate documents are being referenced, the full title of the form *Complaint-Unlawful Detainer* (form UD-100) should be written out and italicized, consistent with the *Mandatory Cover Sheet and Supplemental Allegations- Unlawful Detainer* (form UD-101)so that it is clear to Defendants that two separate forms are being referenced.<br><br>**B. Add reasonable accommodation language**<br>On January 1, 2020, the Department of Fair Employment and Housing issued new regulations interpreting and explaining the Fair Employment and Housing Act's provisions related to reasonable accommodations for people with disabilities, among other topics. | In light of this and other similar comments, the committee has revised item 2. Titles have been added to each subpart and a checkbox where defendant can state that form UD-101 was not received has been added.<br><br>The responses to the complaint and to form UD-101 have been divided into two subparts, and separately titled. The full title of form UD-100 is not included in the subpart for denying allegation in the complaint, because that form is optional, not mandatory. Many unlawful detainer complaints are filed without use of the Judicial Council complaint form, and this answer form cannot be limited only to those cases in which the complaint is filed on form UD-100.<br><br>The committee declined this request when developing the forms in September, and does so again. Although the statement is correct, such accommodations are not specific to COVID-19 eviction protections, which are the impetus for this expedited proposal. To |

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| | | | Because people with disabilities will face myriad additional barriers to timely assertion of their rights during the pandemic, fair housing protections for tenants with disabilities facing eviction are particularly critical at this time. Therefore, the form should include an additional defense regarding reasonable accommodations, and an advisement that people with disabilities are entitled to reasonable accommodations and may request one as needed at any point during the unlawful detainer process, including post judgment. 2 C.C.R. §12176. The current affirmative defense language in 3(f) is extremely general and an unrepresented person would likely not realize that refusal to accommodate constitutes discrimination.<br><br>**C. Add a jury request box**<br>Tenants are being asked to complete and understand a very large number of forms due to the new COVID-19 protections. Please add a jury request box to the Answer form to make it easier for tenants to exercise their constitutional right to a jury.<br><br>**Conclusion**<br>While intended to protect tenants, the complexities of the new COVID-19 laws will place unrepresented tenants at an incredible disadvantage. We are deeply concerned about access to justice for people who receive an unlawful detainer and cannot access legal assistance. 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 | the extent such advice regarding accommodations from a landlord should be included in an information sheet regarding unlawful detainers generally, the committee will consider including it should such an information sheet be developed 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).)<br><br>This suggestion is outside the scope of this proposal and would be a substantive change to the proposal. Moreover, such a request may be made using the current *Request/Counter Request to Set for Trial* (form UD-105). The committee will consider the suggestion in the future as time and resources permit. |

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| | | | leave their homes at all let alone visit a crowded courthouse. We appreciate your efforts to make these forms accessible and comprehensive as possible in this challenging situation. | |

# 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 **December 4 at noon.**

- If you are unable to reply by December 4 at 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 December 7, 2020, the Judicial Council approves the revised *Answer—Unlawful Detainer* (form UD-105).

My vote is as follows:

☒ Approve ☐ Disapprove ☐ Abstain

| | |
|---|---|
| _____ | /s/ |
| Tani G. Cantil-Sakauye, Chair | Marla O. Anderson |
| _____ | /s/ |
| Richard Bloom | C. Todd Bottke |
| /s/ | /s/ |
| Stacy Boulware Eurie | Kevin C. Brazile |
| _____ | /s/ |
| Kyle S. Brodie | Jonathan B. Conklin |
| _____ | /s/ |
| Carol A. Corrigan | Samuel K. Feng |
| /s/ | /s/ |
| Brad R. Hill | Rachel W. Hill |
| /s/ | /s/ |
| Harold W. Hopp | Harry E. Hull, Jr. |

My vote is as follows:

☒ Approve ☐ Disapprove ☐ Abstain

/s/
Patrick M. Kelly

Dalila Corral Lyons

/s/
Gretchen Nelson

/s/
Maxwell V. Pritt

/s/
David M. Rubin

Marsha G. Slough

Date: 12/4/2020

Attest:

Administrative Director and
Secretary of the Judicial Council