



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27–28, 2016

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**Title**

Forms: Declarations of Demurring Party  
Regarding Meet and Confer

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2017

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

Approve forms CIV-140 and CIV-141

**Date of Report**

September 16, 2016

**Recommended by**

Civil and Small Claims Advisory Committee  
Hon. Raymond M. Cadei, Chair

**Contact**

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### Executive Summary

Senate Bill 383 (Stats. 2015, ch. 418) added to and amended statutes governing demurrers to pleadings. New Code of Civil Procedure section 430.41 requires a meet-and-confer session before a party can file a demurrer. The Civil and Small Claims Advisory Committee recommends two new optional forms to implement the meet-and-confer requirements that a demurring party must comply with before filing a demurrer, and to obtain an automatic 30-day extension of time to file a demurrer when the parties were unable to meet before the due date of the responsive pleading.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2017, approve:

1. *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140); and
2. *Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141).

The new forms are attached at pages 8–9.

## Previous Council Action

The Judicial Council has not previously approved or adopted any forms for use with demurrers and was not a sponsor to Senate Bill 383 (Stats. 2015, ch. 418), which added to and amended statutes governing demurrers to pleadings. Effective January 1, 1984, the council adopted rule 325 (renumbered as rule 3.1320) on demurrers and has amended the rule several times since then. The rule does not address meet-and-confer requirements before filing a demurrer.

## Rationale for Recommendation

Proposed new *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140) and *Declaration of Demurring Party in Support of Automatic Extension* (form CIV-141) would be used by a party demurring to a complaint, amended complaint, cross-complaint, or answer to demonstrate compliance with the meet-and confer requirements of Code of Civil Procedure section 430.41(a)<sup>1</sup> and when seeking an automatic 30-day extension of time to file the demurrer. The forms would be useful to implement the new statutory requirements.

***Declaration of Demurring Party Regarding Meet and Confer (form CIV-140).*** This new form would be filed with the demurrer, consistent with the requirements of section 430.41(a)(3), which provides:

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

- (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
- (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

The form provides check boxes for the demurring party or his or her attorney to indicate to which pleading the party is demurring and a declaration stating either (1) that the party met and conferred with the party who filed the pleading subject to demurrer, whether the meeting was by telephone or in person, and that the parties did not reach an agreement resolving the objections raised in the demurrer; or (2) that the party who filed the pleading failed to respond to a request to meet and confer or otherwise failed to meet and confer in good faith.

***Declaration of Demurring Party in Support of Automatic Extension (form CIV-141).*** This new form would be used by the demurring party or his or her attorney to state under penalty of perjury that he or she made a good faith attempt to meet and confer with the party who filed the

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

pleading at least five days before the date the responsive pleading was due. It includes space for the demurring party to describe, as required by the statute, the reasons why the parties could not meet and confer before the initial due date for the responsive pleading. The extension is automatic, provided the party seeking the extension files a declaration on or before the date on which a demurrer would be due.<sup>2</sup> Any further extensions must be obtained by court order upon a showing of good cause.<sup>3</sup> Thus, form CIV-141 would be used only for an initial extension of time.

## **Comments, Alternatives Considered, and Policy Implications**

The proposal circulated for public comment from April 15 to June 14, 2016. Nine commentators submitted comments. Commentators included the California Judges Association (CJA), the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, a judge, a local bar association, two sections of the State Bar of California, and three superior courts. Comments were generally favorable: one commentator agreed with the proposal and eight agreed if modified. The JRS, for example, commented:

This proposal should be implemented because although not required by statute, the forms will educate counsel and parties to the meet and confer requirement, as well as help develop consistency in implementing the amended statute. The proposal may also save judicial time and ensure better compliance with the law if amended as suggested below.

The text of all comments received and committee responses is included in a comment chart attached at pages 10–28. The main substantive comments are discussed below.

### **Expanded requirements for information about meet-and-confer session**

Several commentators suggested that the proposed new forms should be modified to collect additional information about the meet and confer sessions. Suggestions included that:

- The demurring party should be required to disclose by what means he or she requested the other party to meet and confer (form CIV-140 and form CIV-141);
- The demurring party should be required to describe how the meet-and-confer was conducted (form CIV-140);
- The demurring party should be required to explain why no agreement was reached, that is i.e., why the meet-and-confer session was unsuccessful and, if he or she contends that it was not in good faith, to explain why it was not in good faith (form CIV-140);

The allowable means by which the parties may meet and confer is stated in the statute: “[T]he demurring party shall meet and confer *in person or by telephone* with the party who filed the

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<sup>2</sup> Section 430.41(a)(2).

<sup>3</sup> *Ibid.*

pleading that is subject to demurrer ....”<sup>4</sup> Proposed form CIV-140 includes this in item 1, where the demurring party must check a box indicating whether the meet-and-confer was in person or by telephone. One commentator, the Superior Court of Los Angeles County, suggested revising the form to require the demurring party to also state how he or she requested the other party to meet and confer. The court commented: “CIV-140 should be amended to state, under number 2, ‘The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing party was not in good faith are set forth [below or on form MC-031].’ ” The JRS submitted an identical comment suggesting those changes to form CIV-140.

The CJA and a judge commentator agreed with the Superior Court of Los Angeles County that form CIV-140 should require the declarant to describe how he or she asked to meet and confer, and noted that the manner of the request could be related to why the meet-and-confer session did not occur or why the other party failed to meet and confer in good faith. Both commentators wrote:

If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details.

Both also commented that if the demurring party claimed that the effort failed because the opposing party failed to confer in good faith, the court will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The CJA and the judge commentator suggested adding specific questions to the form to elicit this information.

The Superior Court of Los Angeles County and the JRS also commented that form CIV-140 should require an explanation of why an agreement that resolved the issues raised in the demurrer was not reached.

In response to these comments, the committee revised the attached recommended form CIV-140 to indicate that additional information may be provided, but declined to *require* this additional information. In developing the forms, the advisory committee intentionally did not require detailed information about the areas suggested by the commentators because this information is beyond what the statute requires in the declaration that the demurring party must file and serve with the demurrer. As noted above, section 430.41 requires that the declaration state:

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<sup>4</sup> Section 431.41(a) (italics added).

- The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer; and
- That the party who filed the pleading subject to demurrer failed to respond to the meet-and-confer request of the demurring party or otherwise failed to meet and confer in good faith.<sup>5</sup>

By its language, the statute also provides that the adequacy of the meet-and-confer process is not a basis for determining the merits of the demurrer: “Any determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.”<sup>6</sup>

The committee’s view was that the forms should focus on establishing that a meet-and-confer session took place—or could not take place, through no fault of the demurring party—prior to the filing of the demurrer, as required by section 430.41. The forms themselves are therefore not designed for the purpose of providing a judicial officer with information necessary to determine whether the demurring party allowed enough time or made enough contacts with the other party to achieve a meaningful meet-and-confer session. Nor are they designed to describe what took place during the meet-and-confer or to provide any information as to why it was unsuccessful or why the other party did not meet in good faith.<sup>7</sup>

The committee’s view was that all of these issues are collateral to the demurrer. Furthermore, making all of the changes suggested by the commentators would result in the form possibly requiring information about (1) the substance of legal issues presented by the demurrer or (2) collateral issues about how the meet-and-confer session was conducted. Neither of these is required by the new meet-and-confer statutory requirements.<sup>8</sup>

For all these reasons, the committee declined to *require* that the additional information suggested commentators be provided on *Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140). The proposed form has space for the information required by section 430.41 and tracks the statute’s language. The committee’s view is that this is appropriate and the committee therefore declined to change the form to *require* more information about the request for, and conduct of, the meet-and-confer process. However, in response to comments, the

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<sup>5</sup> Section 431.41(a)(3)(A) & (B).

<sup>6</sup> Section 430.41(a)(4).

<sup>7</sup> The slight exception to this is that *Declaration of Demurring Party Regarding Meet and Confer or in Support of Automatic Extension* (form CIV-141) does require an explanation of why the declarant was unable to meet and confer at least five days before the responsive pleading was due. The declarant can do so on the space provided on the form or on an attached declaration.

<sup>8</sup> The advisory committee acknowledges that section 430.41 sets out what should happen as part of the meet-and-confer process: “[T]he demurring party shall identify all of the specific causes of action that it believes are subject to demurrer and identify with legal support the basis of the deficiencies. The party who filed the complaint ... shall provide legal support for its position that the pleading is legally sufficient or, in the alternative, how the complaint ... could be amended to cure any legal insufficiency.” (§ 430.41(a)(1).) But under the statute, this is not required to be stated in the declaration that accompanies the demurrer.

committee has added to form CIV-140 the following: “If you would like to provide additional information, please use form MC-031 Attached Declaration.” That multiuse form declaration includes, among other things, the statement that the declaration is made under penalty of perjury. It has enough space for a demurring party who wishes to do so, to include information about the circumstances and conduct of the meet-and-confer session or about why it did not take place.

When the Rules and Projects Committee (RUPRO) considered this proposal, however, members thought it would be helpful for a judicial officer considering a demurrer to have enough information to be able to determine that the meet-and-confer session was not merely perfunctory. They discussed the utility of having additional information, such as the amount of time spent in the meet-and-confer session, the number of causes of action discussed, or other detailed information. Form CIV-140 could be modified to request this information. Thus, RUPRO recommended council approval of this proposal without modification, but directed the Civil and Small Claims Advisory Committee to gather information from courts about their experiences with form CIV-140 and whether the courts received sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions and to report back to RUPRO within a year.

#### **Use of forms by attorney or self-represented litigant**

As circulated, both forms began with “I (name) was served with,” but the forms’ signature lines are for a party or an attorney. Two commentators noted that if the form is completed and signed by an attorney for a party, the initial statement should not begin with the party’s declaration; it should be modified to be used by either an attorney representing a party or a self-represented litigant.<sup>9</sup> They suggested changing the initial sentence so that it begins with “(Name of party) was served with” rather than “I (name) was served with.” Another commentator suggested addressing this by adding the word “represent” after the initial “I.” The committee agreed with these comments and modified the recommended forms to provide for completion and filing by either a party or an attorney.

#### **Combining forms into a single form**

One commentator and a member of the Rules and Projects Committee suggested that the two forms be combined into one. The commentator did not state any benefits of having one form. Because each form serves a different purpose (obtaining an extension to file a responsive pleading or stating that the demurring party has complied with the prerequisite for filing a demurrer), is used at a different time, and the form for requesting an extension may not need to be used, the advisory committee declined to combine the forms.

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<sup>9</sup> The statute applies to most self-represented litigants. The only exceptions are “[a]n action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution” and “[a] proceeding in forcible entry, forcible detainer, or unlawful detainer.” (§ 430.41(d)(1).)

### **Other comments**

The Superior Court of Ventura County, through its court program supervisor, commented that it would be helpful if form CIV-141 had a space to fill in with the new responding pleading due date. The committee considered this but decided that it could be confusing having two dates for the responsive pleading on the form and that the date could easily be calculated from the initial date.

### **Other changes**

*Declaration of Demurring Party Regarding Meet and Confer* (form CIV-140) has been changed to add a notice, on the first line, that it must be filed with the demurrer. A judge member of the Rules and Projects Committee suggested this change because if the declaration and demurrer are not together, it can be difficult to determine whether the demurring party filed the required declaration.

### **Alternatives**

The advisory committee considered not recommending the two proposed forms but decided that they would be useful to educate parties on the new meet-and-confer requirements and make it easier for courts to find that the requirements had been met. The advisory committee also considered combining the two forms into one form that could be used for both purposes—obtaining an automatic 30-day extension and demonstrating compliance with the meet-and-confer requirements on filing a demurrer. The committee did not make this change because the forms serve different purposes and would never be used at the same time.

### **Implementation Requirements, Costs, and Operational Impacts**

The JRS commented that courts will likely need to add new action codes to existing case management systems to implement the forms, but the cost to do so would be minimal. Similarly, the superior courts of Los Angeles and San Diego Counties noted that case management programming would be needed. Both courts also commented that two months following approval of the proposal would not be sufficient time for implementation. The proposal would require training of courtroom staff and clerical staff who manage new filings and requests for default. The JRS noted that the statutory changes that prompted the development of the new forms also have an effect on staff workload, even without the forms.

### **Attachments and Links**

1. Forms CIV-140 and CIV-141, at pages 8–9
2. Chart of comments, at pages 10–28
3. Senate Bill 383 (Stats. 2015, ch. 418)  
[www.leginfo.ca.gov/pub/15-16/bill/sen/sb\\_0351-0400/sb\\_383\\_bill\\_20151001\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0351-0400/sb_383_bill_20151001_chaptered.pdf)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):		<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
Plaintiff/Petitioner: Defendant/Respondent:		
<b>DECLARATION OF DEMURRING PARTY REGARDING MEET AND CONFER</b>		CASE NUMBER:

*To the demurring party: This form must be filed with the demurrer.*

(Name of demurring party) was served with  
☐ a complaint ☐ an amended complaint ☐ a cross-complaint  
☐ an answer ☐ other (specify):

in the above-titled action and is filing a demurrer to the pleading.

**DECLARATION** (Choose either (1) or (2) below.)

- (1) ☐ At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ☐ by telephone ☐ in person and we did not reach an agreement resolving the matters raised by the demurrer.
- (2) ☐ The party who filed the pleading subject to demurrer failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.

*If you would like to provide additional information, please use form MC-031 Attached Declaration.*

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

\_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY)



\_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)



ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name):	STATE BAR NO:  STATE:      ZIP CODE: FAX NO.:	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b>  <b>NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
Plaintiff/Petitioner: Defendant/Respondent:		
<b>DECLARATION OF DEMURRING PARTY IN SUPPORT OF AUTOMATIC EXTENSION</b>		CASE NUMBER:

(Name of demurring party) was served with

☐ a complaint    ☐ an amended complaint    ☐ a cross-complaint

☐ an answer    ☐ other (specify):

in the above-titled action. A responsive pleading is due on (date):

#### DECLARATION

I intend to file a demurrer in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am demurring to at least five days before the date when the responsive pleading is due. We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure section 430.41, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading.

I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due. I was unable to meet with that party because:

(The reasons why the parties could not meet and confer are set forth):

☐ below    ☐ on form MC-031, Attached Declaration

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date:

\_\_\_\_\_  
(NAME OF PARTY OR ATTORNEY FOR PARTY)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## SPR16-11

### Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Lexi Howard, Legislative Director	AM	<p>Thank you for the opportunity to provide comments on behalf of the California Judges Association (CJA).</p> <p>The first form declaration is designed to demonstrate compliance or an attempt at compliance. The second form declaration is designed to obtain the extension of time. CJA supports this proposal if the proposed first form declaration were amended to elicit sufficient information from which the Court can determine (1) whether the demurring party made a good-faith effort to meet and confer with the other side and (2) whether the opposing party met and conferred in good faith.</p> <p>The first declaration offers two check-the-box choices. The first option reads: “At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ___by telephone ___in person and we did not reach an agreement resolving the matters raised by the demurrer.” This language is adequate. In addition, it appropriately reminds counsel that the meeting must be either in person or by telephone; merely sending a letter is not sufficient.</p> <p>The second option reads simply: “The party who filed the pleading subject to demurrer</p>	

## SPR16-11

### Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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

	Commentator	Position	Comment	Committee Response
			<p>failed to respond to my request to meet and confer or otherwise failed to meet and confer in good faith.” This language suffers from several defects, as follows:</p> <p>1. It does not inform the Court whether the effort failed because the opposing side did not respond, or because the opposing side responded but failed to confer in good faith.</p> <p>2. If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details.</p> <p>Just as we expect the meeting to be conducted either by telephone or in person, the request should be made by telephone, or the demurring party should follow up on the written request by a telephone call if a letter or email does not elicit a response. The conclusory language of the proposal does not permit the Court to determine whether the demurring party’s efforts to meet were sufficient.</p>	<p>The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful or did not occur. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed.</p>

## SPR16-11

### Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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

	Commentator	Position	Comment	Committee Response
			<p>3. If the effort failed because the opposing party failed to confer in good faith, the Court will need more than simply that bare assertion. Instead, it will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The proposed form does not elicit evidence sufficient to allow the Court to make such a judgment. In short, this form does not give the Court the information it needs to determine whether the demurring party made a good-faith effort to meet with the other side. To remedy that omission, the second option should be replaced with something similar to the following:</p> <p>(2) I asked the party who filed the pleading subject to demurrer to meet and confer. (a) ___ I did so by sending that request in a letter or email and telephoning that party when that party did not respond to my written request. (b)___ I did so by telephoning the party and describing my request. (c)___ I did so by _____.</p> <p>(3) The party who filed the pleading subject to the demurrer:</p>	<p>The form has been modified to add the following sentence, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed. In addition, at the direction of the Rules and Projects Committee, over the next year, the Civil and Small Claims Advisory Committee will gather information from courts about their experiences with form CIV-140 and whether the courts received sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions.</p>

**SPR16-11****Forms: Declarations of Demurring Party Regarding Meet and Confer** (approve forms CIV-140 and CIV-141)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>(a) ___ Did not respond to my request to meet and confer.</p> <p>(b) ___ Refused to meet and confer.</p> <p>(c) ___ Did not refuse to meet, but thereafter failed to meet and confer in good faith, as shown by:</p> <p>___ The following facts:</p> <p>_____</p> <p>___The evidence recited in attachment 3 to this declaration.</p> <p>We find the proposed second form declaration to be adequate.</p> <p>Our comments here are intended to assist with this proposal at this stage and are not representative of a position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.</p>	
2.	Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	AM	<p>Recommended JRS Position: Agree with proposed changes if modified.</p> <p>General Note: This proposal should be implemented because although not required by statute, the forms will educate counsel and parties to the meet and confer requirement, as well as help develop consistency in implementing the amended statute. The proposal may also save judicial time and ensure better compliance with the law if amended as suggested below.</p>	The committee appreciates the comment and agrees that the proposal may be time-saving.

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	Commentator	Position	Comment	Committee Response
			<p>Regarding the impact on existing automated systems: Courts will likely be required to add new action codes to existing case management systems, however, the cost to do so would be minimal.</p> <p>Regarding additional training: This proposal will require minimal training on the new court forms for staff.</p> <p>Regarding increases to court staff's workload: This proposal will result in a slight increase in workload for court staff. It should be noted, however, that the statutory changes which prompted development of the new forms would have also increased staff workload.</p> <p>Other impact: In order to save judicial time at the demurrer hearing, it is necessary for the parties to describe the problems they encountered in the required meet and confer process. In addition, requiring the parties to be more specific will save judicial time by encouraging a meet and confer process that is effective.</p> <p>Request for Specific Comments:</p> <ul style="list-style-type: none"><li>• Does the proposal appropriately</li></ul>	<p>The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the</p>

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	Commentator	Position	Comment	Committee Response
			<p>address the stated purpose? Comment: Yes.</p> <ul style="list-style-type: none"><li>• Would the proposal provide a cost savings? If so please quantify. Comment: This proposal will not provide a cost savings.</li><li>• What would the implementation requirements be for courts? Comment: It is likely that most courts will be required to add new codes to reflect that the forms have been filed.</li><li>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Comment: Yes.</li><li>• How well would this proposal work in courts of different sizes? Comment: It is unlikely that the size of a court would make any difference in implementing this proposal.</li></ul> <p>Suggested Modifications: If implemented without amendment, proposed form CIV-140 may encourage counsel to adopt a “check-the-box” or dismissive attitude toward the meet and confer requirement.</p>	<p>form that reads, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Form CIV-141 requires a party who has not been able to meet and confer timely to give a reason why that is the case. However, Form CIV-140 does not provide room under number 2 for the declarant to explain why the meet and confer did not take place or why it was not in good faith. CIV-140 should be amended to state, under number 2, “The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing party was not in good faith are set forth: [below or on form MC-031].”</p> <p>In addition, CIV-140 should require the demurring party to explain why agreement resolving the issues raised in the demurrer was not reached. While the demurring party cannot explain what was in the mind of the opposing party, he or she can explain what issues were discussed, why he or she decided to continue to pursue the demurrer, and what reasons were given by the opposing party for not amending. If no explanation is required, there is no way for the Court to determine whether or not the meet and confer was in good faith or rather whether the meet and confer was completely perfunctory. We recommend that under what is now number 1, the</p>	<p>The committee has modified the form to specifically refer to attaching Form MC-031 if more space is needed.</p> <p>The committee declined to make this change and believes that requiring more information on the declaration could result in unnecessary time spent on issues collateral to those in the demurrer. However, at the direction of the Rules and Projects Committee, over the next year, the Civil and Small Claims Advisory Committee will gather information from courts about their experiences with form CIV-140 and whether the courts received sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions.</p>



## SPR16-11

### Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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			following be included: “The specific reasons why the meet and confer discussion was unsuccessful as to each of the issues raised in the demurrer are set forth: [below or on form MC-031].”	
3.	Orange County Bar Association Todd G. Friedland, President	AM	The forms would be helpful to the litigant but they should be combined as one form. It is a good idea to clarify who the declarant is. Perhaps add the word “represent” after the initial “I”.	The committee declined to combine the two forms into one because they are used for different purposes and filed at different times. The committee has modified both forms to read “(Name of demurring party)” rather than “I (name).”
4.	Hon. Craig G. Riemer, Judge Superior Court of Riverside County	AM	<b>First Form Declaration:</b> The first declaration offers two check-the-box choices. The first option reads: “At least five days before filing the demurrer, I met and conferred with the party who filed the pleading subject to the demurrer ___by telephone ___in person and we did not reach an agreement resolving the matters raised by the demurrer.” This language is adequate. In addition, it appropriately reminds counsel that the meeting must be either in person or by telephone; merely sending a letter is not sufficient.  The second option reads simply: “The party who filed the pleading subject to demurrer failed to respond to my request to meet and confer or otherwise failed to meet and	

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			<p>confer in good faith.” The language of the second option suffers from several weaknesses:</p> <p>1. It does not inform the Court whether the effort failed because the opposing side did not respond, or because the opposing side responded but failed to confer in good faith.</p> <p>2. If the effort failed because the opposing side allegedly failed to respond to the request, the Court will want to know the manner by which the demurring party requested a meeting. Did the demurring party just send a letter or email? Did the demurring party call the opposing side? Both? Neither? The proposed language does not require the demurring party to disclose any of those details.</p> <p>Just as we expect the meeting to be conducted either by telephone or in person, the request should be made by telephone, or the demurring party should follow up on the written request by a telephone call if a letter or email does not elicit a response. The conclusory language of the proposal does not permit the Court to determine whether the demurring party’s efforts to meet were sufficient.</p>	<p>The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to disclose any details concerning the conduct of the meet-and-confer session or why it was unsuccessful or did not occur. In response to comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed.</p>

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			<p>3. If the effort failed because the opposing party failed to confer in good faith, the Court will need more than simply that bare assertion. Instead, it will need to know how the opposing side responded to make its own conclusion as to whether that response was in good faith. The proposed form does not elicit evidence sufficient to allow the Court to make such a judgment. In short, this form does not give the Court the information it needs to determine whether the demurring party made a good-faith effort to meet with the other side. To remedy that omission, the second option should be replaced with something similar to the following:</p> <p>“(2) I asked the party who filed the pleading subject to demurrer to meet and confer.</p> <p>(a) ___I did so by sending that request in a letter or email and telephoning that party when that party did not respond to my written request.</p> <p>(b)___I did so by telephoning the party and describing my request.</p> <p>(c)___ I did so by</p> <p>_____.</p> <p>“(3) The party who filed the pleading subject to the demurrer:</p> <p>(a) ___ Did not respond to my request</p>	<p>The form has been modified to add the following sentence, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed. In addition, at the direction of the Rules and Projects Committee, over the next year, the Civil and Small Claims Advisory Committee will gather information from courts about their experiences with form CIV-140 and whether the courts received sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions.</p>

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			<p>to meet and confer.</p> <p>(b) ____ Refused to meet and confer.</p> <p>(c) ____ Did not refuse to meet, but thereafter failed to meet and confer in good faith, as shown by:</p> <p>____ The following facts:</p> <p>____ The evidence recited in attachment 3 to this declaration.</p> <p><b>Second Form Declaration:</b></p> <p>The language of the second form declaration is adequate.</p> <p>In summary, SPR16-11 should not be approved unless the proposed first form declaration is expanded to elicit sufficient information from which the Court can determine both (1) whether the demurring party made a good-faith effort to meet and confer with the other side and (2) whether the opposing party met and conferred in good faith.</p>	
5.	State Bar of California Litigation Section Jessica Barclay-Strobel, Vice Chair, Rules and Legislation Committee	AM	The Committee supports the proposed revisions and believes that they appropriately address the stated purpose of providing two new optional forms to implement the new meet-and-confer requirements that a demurring party must	

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		<p>comply with before filing a demurrer, and to obtain an automatic 30-day extension of time to file a demurrer when the parties were unable to meet before the due date of the responsive pleading.</p> <p>We suggest the following edits so as to avoid confusion where the individual who was served with the pleading (e.g. the party) is not the same individual conducting the meet and confer (e.g. the party's attorney), or where a party disputes proper service. We also propose language that includes the relevant code citation and eliminates extraneous text.</p> <p><u>Form CIV-140</u></p> <p>We suggest the following revision to Form CIV-140 to appear above the check boxes listing pleadings (complaint, cross-complaint, etc.):</p> <p style="text-align: center;"><u>“I _____ <del>was served with</del> am filing a demurrer to the following pleading in the above-titled action:</u></p> <p style="text-align: center;"><input type="checkbox"/> a complaint    <input type="checkbox"/> an amended complaint    <input type="checkbox"/> a cross-complaint <input type="checkbox"/> an answer    <input type="checkbox"/> other (specify):</p>	<p>The committee has made a change similar to that proposed by the commentator.</p>

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### Forms: Declarations of Demurring Party Regarding Meet and Confer (approve forms CIV-140 and CIV-141)

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		<p><del>in the above-titled action.”</del></p> <p>We also suggest editing the Declaration in Form CIV-140 as follows:</p> <p>“At least five days before filing the demurrer, I met and conferred <u>pursuant to Code of Civil Procedure section 430.41</u> with the party who filed the pleading subject to the demurrer ....”</p> <p><u>Form CIV-141</u></p> <p>We suggest the following revisions to Form CIV-141:</p> <p>“I _____ <del>was served with an</del> <u>seeking a 30-day automatic extension for filing a demurrer to the following pleading in the above-titled action :</u></p> <p><input type="checkbox"/> a complaint    <input type="checkbox"/> an amended complaint    <input type="checkbox"/> a cross-complaint</p> <p><input type="checkbox"/> an answer    <input type="checkbox"/> other (<i>specify</i>):</p> <p><del>in the above-titled action.”</del></p> <p>We also suggest editing the Declaration in Form CIV-141 as follows:</p>	<p>The committee does not think it necessary to add the citation to the declaration. The citation is referenced in the footer.</p> <p>The committee has made a change similar to that proposed by the commentator.</p> <p>The committee declined to make this change.</p>

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			<p><del>“I intend to file a demurrer in this action. Before I can do so, I am required to meet and confer with the party who filed the pleading that I am demurring to at least five days before the date when the responsive pleading is due. We have not been able to meet and confer. I have not previously requested an automatic extension of time. Therefore, on timely filing and serving a declaration that meets the requirements of Code of Civil Procedure section 430.41, I am entitled to an automatic 30-day extension of time within which to file a responsive pleading.</del></p> <p>I made a good faith attempt to meet and confer with the party who filed the pleading at least five days before the date the responsive pleading was due. I was unable to meet with that party pursuant to <u>Code of Civil Procedure</u></p>	

**SPR16-11****Forms: Declarations of Demurring Party Regarding Meet and Confer** (approve forms CIV-140 and CIV-141)

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			<p><u>section 430.41</u> because.”</p> <p><b><u>DISCLAIMER</u></b></p> <p><b>This position is only that of the Rules and Legislation Committee of the State Bar of California’s Litigation Section. This position has not been adopted by the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Rules and Legislation Committee and in the Litigation Section is voluntary, and funding for their activities, including all legislative activities, is obtained entirely from voluntary sources.</b></p>	
6.	State Bar of California Committee on Administration of Justice (CAJ) Saul Bercovitch, Legislative Counsel	AM	<p>CAJ supports this proposal subject to the comments below.</p> <p>CAJ recommends that the first paragraph of proposed Form CIV-140 be modified as follows: “<del>I</del>(<del>name</del>) <b><u>(Name of party)</u></b> was served with [a pleading] in the above-titled action and <del>I am</del> <b><u>is</u></b> filing a demurrer to the pleading.” CAJ recommends that the first paragraph of proposed Form CIV-141 be modified as follows: “<del>I</del>(<del>name</del>) <b><u>(Name of party)</u></b> was served with [a pleading]...”</p>	The committee agrees and has made this change.



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			These recommended revisions are intended to make the forms suitable for situations in which the pleading subject to demurrer is served on the party directly, as is often the case with original pleadings, rather than the party's counsel. CAJ believes the revised language would also be appropriate for other pleadings, whether served on a party directly or on a party's counsel as authorized representative.	
7.	Superior Court of Los Angeles County	AM	<p><b>Suggested modifications:</b></p> <p>If implemented without amendment, proposed form CIV-140 may encourage counsel to adopt a "check-the-box" or dismissive attitude toward the meet and confer requirement.</p> <p>Form CIV-141 requires a party who has not been able to meet and confer timely to give a reason why that is the case. However, Form CIV-140 does not provide room under number 2 for the declarant to explain why the meet and confer did not take place or why it was not in good faith. CIV-140 should be amended to state, under number 2, "The manner of requesting the meet and confer and/or an explanation why the meet and confer compliance by the opposing</p>	<p>The committee notes that the legislation requiring the meet-and-confer process does not require the demurring party to explain why the meet-and-confer session was not in good faith or was unsuccessful. In response to</p>

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		<p>party was not in good faith are set forth: In addition, CIV-140 should require the demurring party to explain why agreement resolving the issues raised in the demurrer was not reached. While the demurring party cannot explain what was in the mind of the opposing party, he or she can explain what issues were discussed, why he or she decided to continue to pursue the demurrer, and what reasons were given by the opposing party for not amending. If no explanation is required, there is no way for the Court to determine whether or not the meet and confer was in good faith or rather whether the meet and confer was completely perfunctory. We recommend that under what is now number 1, the following be included: “The specific reasons why the meet and confer discussion was unsuccessful as to each of the issues raised in the demurrer are set forth: [below or on form MC-031].”</p> <p><b>Request for Specific Comments:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> This proposal does address the stated purpose.</li><li><input type="checkbox"/> No cost savings have been identified.</li><li><input type="checkbox"/> Implementation would require training of clerical and courtroom staff and programming of the case management system (CMS) regarding the forms related</li></ul>	<p>comments, however, the committee modified form CIV-140 to allow the demurring party to provide information in addition to stating whether the parties met by phone or in person, were unable to meet, or did not meet and confer in good faith. A sentence has been added to the form that reads, “Form MC-031 <i>Attached Declaration</i> may be used if more space is needed.</p> <p>In addition, at the direction of the Rules and Projects Committee, over the next year, the Civil and Small Claims Advisory Committee will gather information from courts about their experiences with form CIV-140 and whether the courts received sufficient information from demurring parties about whether the parties engaged in meaningful meet-and-confer sessions.</p> <p>The committee appreciates these comments.</p>

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			<p>to the meet and confer and the automatic 30-day continuance.</p> <p><input type="checkbox"/> Two months after approval of this proposal would not be sufficient time for implementation. Up to 6 months may be needed for implementation in order to ensure proper training and programming of the CMS.</p> <p><input type="checkbox"/> We have no comment regarding courts of different sizes.</p>	
8.	Superior Court of San Diego County Mike Roddy, CEO	AM	<p>Q: Does the proposal appropriately address the stated purpose? Yes.</p> <p>Q: Would the proposal provide cost savings? No. It would increase costs paid to staff managing filings-both new proposed filings and Requests for Default.</p> <p>Q: What are implementations requirements for courts? Need a better understanding of how this would impact CCP §585 Default Guidelines. New Case Management System programming needed – new filings.</p> <p>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation? No.</p> <p>Q: How well would this proposal work in courts of different sizes? Large volume courts would have a greater impact than smaller volume courts.</p>	The committee appreciates these comments.

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9.	Superior Court of Ventura County Ned Elfrink, Court Program Supervisor	A	It would be good if form CIV-141 had space for a new date filled in as to the NEW date when a responsive pleading is due. This will avoid any confusion with the clerk's office as to when a default can be accepted.	The committee discussed this comment and declined to add a space for a new date, believing it would be confusing to have two dates on the form and relatively easy for a clerk to determine the new responsive pleading due date.