



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-125*

For business meeting on: May 15, 2020

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Title	Agenda Item Type
Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3	Action Required
	Effective Date
	September 1, 2020
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt form SH-001	March 24, 2020
Recommended by	Contact
Civil and Small Claims Advisory Committee	Eric Long, 415-865-7691
Hon. Ann I. Jones, Chair	<a href="mailto:eric.long@jud.ca.gov">eric.long@jud.ca.gov</a>

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### Executive Summary

The Civil and Small Claims Advisory Committee proposes a new form for Judicial Council adoption, *Confidential Information Form Under Code of Civil Procedure Section 367.3* (form SH-001). This mandatory form implements Assembly Bill 800 (Stats. 2019, ch. 439), which provides that a party who is participating in the Safe at Home program (an address confidentiality program run by the Secretary of State) may appear pseudonymously in a civil action, and that the true name of the party as well as any other identifying characteristics are to be kept confidential by the court and other parties in the case. The new form allows pseudonymous parties to provide their true names to the courts and the other parties to the action, and to attest to the party's active participation in the Safe at Home confidential address program. The form also allows all parties to such a case to list any identifying characteristics that have been redacted from a pleading or other document filed with the court.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt *Confidential Information Form Under Code of Civil Procedure Section 367.3* (form SH-001), effective September 1, 2020.

The new form is attached at pages 7–8.

### **Relevant Previous Council Action**

This is a new legislative requirement and as such, the Judicial Council has not taken any previous action on this matter.

### **Analysis/Rationale**

The Safe at Home address confidentiality program administered by the Secretary of State is intended to protect the privacy and safety of individuals who have been subject to domestic violence, sexual assault, stalking, human trafficking, or elder or dependent abuse. (Gov. Code, § 6205.) It provides participants with the ability to maintain a confidential mailing address in order to shield their location from abusers. Assembly Bill 800<sup>1</sup> adds section 367.3 to the Code of Civil Procedure, effective January 1, 2020, providing that a party who is an active participant in the Safe at Home address confidentiality program (defined as a “protected party”) may appear in a civil action under a pseudonym (Jane Doe, John Doe, or Doe) and may exclude or redact— from all documents the party files—any identifying characteristics, including name, addresses (physical or online), age, or marital status. (See full list at Code Civ. Proc., § 367.3(a).)

Under the new law, a protected party who files pseudonymously must file with the court and serve all other parties to the proceeding with a confidential information form that includes the protected party’s true name and other identifying characteristics that have been redacted from the document. The court must keep the information, including the protected party’s true name, confidential. (§ 367.3(b)(1).)

Once a party to a proceeding has been served with this confidential information form, that party and that party’s attorneys must use the protected party’s pseudonym in all pleadings and other documents filed or served in the action, and must redact or exclude any identifying characteristics of the protected party from any documents filed in the case, serving and filing with such redacted documents a confidential information form containing the factual information. (§ 367.3(b)(2).)

Form SH-001 would implement section 367.3’s *confidential information form* requirement. The form is to be served and filed by a party who is an active participant in the Safe at Home program and who decides to proceed in a civil action pseudonymously. The form is to inform the court and the other parties of the protected party’s true name and of any other identifying characteristics (such as address) that have been redacted (or blacked out) from any document filed with the court. There is a declaration included on the form in which a protected party must assert the required active participation in the Safe at Home program and agree to provide evidence of that participation if required by the court. Participants in the program who want to

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<sup>1</sup> A copy of AB 800 (Stats. 2019, ch. 439) bill is available online at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB800](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB800).

proceed in a civil action using a pseudonym must file and serve SH-001 every time they file a document under a *Doe* name.

The form will also provide notice to the other parties in the case that the protected party is invoking this new law to keep all identifying characteristics, including a name, an address, and other contact information, confidential, and it will inform the court of the true name of the protected party filing a document using a *Doe* name. Finally, the form allows all parties to such a case to list any identifying characteristics that have been redacted from a pleading or other document filed with the court, as required by section 367.3(b)(1).

### **Policy implications**

The policy implication of proceeding under a pseudonym and redacting identifying information arises from the legislation, not from the proposed form, because the legislation requires that a protected person's true name and other identifying characteristics be excluded or redacted. The law requires a *confidential information form* to be filed with the court and served upon all other parties to the proceeding. The law took effect January 1, 2020, so the committee has proposed a September 1, 2020 effective date for the new form.

### **Comments**

This proposal was circulated for public comment from December 11, 2019, to February 11, 2020, as part of the winter public comment cycle. The committee received comments from eight entities including three courts, the Superior Courts of San Diego, Los Angeles, and Orange Counties, with two divisions of the Orange County court commenting separately; the Public Law Center; and the Orange County Bar Association. The committee also received informal comments, reported orally to staff, from the Family and Juvenile Law Advisory Committee. The commenters that answered the questions posed in the proposal all indicated that the proposal appropriately addressed the stated purpose. The committee considered all comments; discussed below are the primary issues raised by the comments. A chart with the full text of the comments received and the committee's responses is attached at pages 9–23.

### ***Form prefix***

The proposed form circulated for public comment with prefix MC (standing for Miscellaneous), but at the suggestion of several commenters, the committee concluded that a new form category should be assigned: SH (standing for Safe at Home). The SH prefix is intended to make the form easier for Safe at Home participants to locate, and in addition to convenience, the committee favored creating a new form category because the committee anticipates developing new forms relating to motions to seal and redact for protected parties to use after an action has commenced.

### ***Establishing active participation in the Safe at Home program***

Overwhelmingly, the commenters agreed that a person's declaration under penalty of perjury that the person is an active participant in the Safe at Home program was sufficient to establish

eligibility for confidentiality.<sup>2</sup> One commenter suggested that some proof should be required because individuals may be terminated from the program, and another commenter offered that filers could bring their identification cards with them at the time they are filing the form.

The proposed form retains use of a declaration to avoid delays that would arise from requiring a filer to establish proof of active participation at the time of filing. The committee considered the alternative of including a requirement in this form, or by rule of court, that a party must establish this active participation before being allowed to file pseudonymously. However, because there is no express provision in the new law requiring a protected party to establish active participation in the program before filing pseudonymously, and because the time involved in establishing such proof in advance of filing a complaint might impact statute of limitations or discovery deadlines, the committee decided not to mandate proof of participation prior to filing, but to instead include a declaration under penalty of perjury in the new form asserting active participation in the program. The declarant also is asked to agree to provide proof of active participation if required to do so by the court. Based on informal input from the Family and Juvenile Law Advisory Committee, the committee revised the form to ask the declarant to provide their program participant number (ID), if available, which may assist the Secretary of State in directing mail to a protected party at their confidential substitute address.

### ***Multiple pseudonymous parties***

The committee revised item 3 on the form in response to comments from the Family and Juvenile Law Advisory Committee that the form should take into consideration the potential for multiple participants in the Safe at Home program appearing in an action and choosing to proceed under pseudonyms. The committee agreed but concluded that each participant in the program would have to file a confidential information form. As revised, item 3 seeks the same information as the draft that was circulated for comment with one addition. The information sought has been reordered to ask first for the true name of the party, then the party type, and then the pseudonym used: Jane Doe, John Doe, or Doe. If multiple parties are proceeding under pseudonyms, the form now solicits an identifying number for the *Doe* name (e.g., Jane Doe #2).

### ***Form as a cover sheet for filings by pseudonymous parties***

To ensure that filings by parties proceeding pseudonymously under section 367.3 are properly handled by courts, the committee changed instruction 2 on page 2 and added a parenthetical instruction to item 3 that tells parties to complete the form each time a party using a pseudonym files a document. This change was suggested in part by the Superior Court of Los Angeles County, because the instruction had stated that the form must be filed the “first time” the pseudonym is used. However, the third sentence stated that the form must be submitted with each document that has been redacted. The committee initially conceived of the form being used

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<sup>2</sup> The new law provides that “protected persons” may file pseudonymously and defines a protected person as “a person who is an active participant in the address confidentiality program created pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code.” (§ 367.3(a)(3).)

the first time a party appears to declare an intention to proceed pseudonymously and then only if a document contains redactions. Based on the comments received, the committee determined that the form should be used as a cover sheet for filings by *Doe* parties, which may be helpful to courts in processing pseudonymous filings. The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) advised that there are courts that have case management systems that may not be able to create pseudonym case types or case categories. Until the superior courts have a uniform system in place for managing pseudonymous filings under section 367.3, the committee decided to err on the side of caution and to treat form SH-001 as a cover sheet for any document filed by a pseudonymous party. When used by parties who are not proceeding under a pseudonym, however, the form is required only when information has been redacted from a document.

### **Alternatives considered**

The committee notes that the statute requires the Judicial Council to adopt or revise, as appropriate, rules and forms, and expressly contemplates a *confidential information form*. The committee decided that the proposed new form for proceeding under a pseudonym and identifying all redacted confidential information would be useful. The committee also considered whether any changes to rules or the creation of additional forms were needed at this time.

As noted above, this new law allows not only plaintiffs, but all parties, including defendants and respondents, to proceed pseudonymously and to avail themselves of the confidentiality provisions of section 367.3. However, there is nothing in the new statute that addresses what is to be done with a publicly filed complaint or petition that already has a party's true name and other identifying information in it. The statute requires parties going forward to use a designated pseudonym and to keep identifying information confidential, but it does not require any party to withdraw or amend pleadings already on file that contain a protected party's true name. Courts are also not authorized to redact or change the register of action or the original pleading in any way based on the filing of a confidential information form.

Ultimately, the committee concluded that a protected party could obtain the desired confidentiality of information in prior-filed documents and court records, so long as that party takes further steps. In addition to allowing pseudonymous filing, the statute allows the court, upon motion of the protected party, to seal all or part of a record, under the California Rules of Court regarding sealing (rules 2.550 and 2.551). (See § 367.3(b)(4).) Under this provision, a pseudonymous defendant, for example, could move to have the original complaint containing the defendant's true name and potentially other identifying characteristics sealed, lodging with the motion a redacted copy of the complaint which could be placed in the public record in place of the original. A sealing order may include the sealing not only of the original complaint but of any other information in court records (including the register of action) found to be confidential. (See Cal. Rules of Court, rule 2.551(e)(2).)

The committee included in the instructions on the new form a warning to pseudonymous parties that the requirement that the other side use the pseudonym and redact or exclude other

identifying characteristics is prospective only. (See form SH-001, at Instruction 3.) The instruction also notes that if the protected party wants to protect the name and identifiers in a publicly filed document, a motion to seal will be necessary. The committee will consider in the next rule-making and forms cycle new forms for use by protected parties who want to seal and/or redact records that are already on file with identifying information included in them.

### **Fiscal and Operational Impacts**

A confidential information form is expressly required in AB 800. As a result of the enactment of that law, clerks, judicial officers, and court legal services and self-help offices will require training on the new pseudonymous filing process permitted for participants in the Safe at Home program, and on the level of confidentiality to be accorded to certain information relating to such parties. New training materials and internal procedures will need to be developed.

Several commenters indicated that the confidentiality requirements of the law could affect the courts' case management systems. JRS stated that while some court systems were equipped to handle pseudonymous filings, other courts had expressed concern about their systems' ability to create a pseudonym type and to manage such filings. The committee is aware of these potential operational impacts. They are the result of the new law, rather than the proposed form. The new form is intended to assist both the parties and the courts in complying with the law's confidentiality procedures, but the form cannot resolve the operational concerns raised by some courts.

### **Attachments and Links**

1. Form SH-001, at pages 7–8
2. Chart of comments, at pages 9–23
3. Link A: AB 800 (Stats. 2019, ch. 439) at  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB800](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB800)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (party name or pseudonym):	FOR COURT USE ONLY  <b>DRAFT</b>  <b>03-24-2020</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:	
SHORT TITLE:	
<b>CONFIDENTIAL INFORMATION FORM UNDER CODE OF CIVIL PROCEDURE SECTION 367.3</b>	
CASE NUMBER:	
TO COURT CLERK: THIS FORM IS CONFIDENTIAL TO PARTIES: USE THIS FORM ONLY IF A PARTY IS AN ACTIVE PARTICIPANT IN THE SAFE AT HOME PROGRAM	

*(Instructions for filer and recipient are on the back of this form.)*

1. This case includes a party who is enrolled in the Safe at Home address confidentiality program with the Secretary of State, and who is filing using a pseudonym (Jane Doe, John Doe, or Doe) under Code of Civil Procedure section 367.3.
2. The document that this form is being filed with is a (check one):
  - a. ☐ Complaint, cross-complaint, or petition.
  - b. ☐ Answer, response, objection, or other first paper.
  - c. ☐ Discovery document.
  - d. ☐ Other (describe):
3. **True Name and Pseudonym of Party** (Complete for any pleading or document filed by a participant in the Safe at Home program.)
  - a. True name of party:
  - b. Party type (check one):
 

☐ Plaintiff/petitioner  
☐ Defendant/respondent/objector  
☐ Other (describe):
  - c. Pseudonym used (check one): ☐ Jane Doe ☐ John Doe ☐ Doe
  - d. If more than one party is using the same pseudonym, add an identifying number (such as Jane Doe #2): \_\_\_\_\_
4. **Redacted Information** (Complete for any pleading or document that includes redactions or blacked-out information.)

LOCATION OF REDACTED INFORMATION (page, and item or line number where the redaction occurs)	INFORMATION REDACTED (text of identifying characteristics that has been redacted or blacked out; see Instruction No. 5 on page 2)
a.	
b.	
c.	

☐ Check here if there is not enough space for all the redacted material, and continue on an attached sheet titled Attachment 4.

SHORT TITLE:	CASE NUMBER:
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5. Number of pages attached: \_\_\_\_\_

Date:

(TYPE OR PRINT NAME)	(SIGNATURE)
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**Declaration by Pseudonymous (Doe) Party**

I (*true name*) \_\_\_\_\_ declare under penalty of perjury under the laws of the State of California that I am an active participant in the Safe at Home confidential address program with the California Secretary of State. My Safe at Home Authorization Card (ID) No. (if available) is: \_\_\_\_\_. I agree to provide proof of my active participation if required to do so by the court.

Date:

(TYPE OR PRINT TRUE NAME)	(SIGNATURE)
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**INSTRUCTIONS**

**(Note: This form may be used only in cases in which one or more parties is enrolled in the Safe at Home program and using a pseudonym under Code of Civil Procedure section 367.3.)**

1. The Safe at Home program is an address confidentiality program run by the Secretary of State. Parties who are active participants in that program may use a pseudonym (Jane Doe, John Doe, or Doe) in place of the party's true name in a civil action. (Plaintiffs or petitioners who do this must state on the front of the complaint "ACTION BASED ON CODE OF CIVIL PROCEDURE SECTION 367.3.") Pseudonymous parties may also exclude or redact (black out) other identifying characteristics (defined below) from all pleadings and documents they file, and instead provide that information confidentially to the court and other parties using this form. (See Code Civ. Proc., § 367.3(b)(1).) In such cases, papers filed by other parties in the case also **must** be worded so as to protect the name or other identifying characteristics of the *Doe* party from public revelation, or have that information redacted (blacked out on the document). Any intentional violations of this law are subject to sanctions. (See Code Civ. Proc., § 367.3(b)(2).)
2. **This form must be served and filed each time a party uses a pseudonym (a *Doe* name) in place of that party's name in a court document, with items 2 and 3 completed to provide the court and other parties with the *Doe* party's true name, and item 4 completed if there are other identifying characteristics redacted or blacked out from the document.** A party using a pseudonym must also sign and date the declaration above, confirming active participation in the Safe at Home program. All parties and other persons must also serve and file this form any time they file a document in a case with identifying characteristics redacted or blacked out. Counsel for a party filing under a pseudonym may use the pseudonym for the name of the represented party in the attorney or party information box at the top of this form and any documents filed later.
3. **Warning to pseudonymous (Doe) party:** If a pseudonymous party initially files using a *Doe* name after another party has already filed something with the court (for example, if the pseudonymous party is a defendant, respondent, or objector), the statute does not automatically require that first party or the court to redact the true name or other identifying characteristics from documents or records already in the public files. A pseudonymous party who wants to restrict access to the party's name or other identifying characteristics in a document that has already been filed must make a motion (request) that the court seal the record or part of it under rules 2.550 and 2.551 of the California Rules of Court. (See Code Civ. Proc., § 367.3(b)(3).)
4. **Warning to recipient of this form:** A party who is served with this form is subject to Code of Civil Procedure section 367.3 and required to keep the information on the form, including the pseudonymous (*Doe*) party's true name, confidential. In addition, a party served with this form is required to use the *Doe* party's pseudonym in all pleadings and documents in the case from that point forward, to redact (black out) any other identifying characteristics from any pleading or document filed with the court after that point, and to use this form to provide to the court and other parties any information that has been redacted. A completed form SH-001 must be served and filed together with any redacted document.
5. "Identifying characteristics" that the party using the pseudonym may and all other parties **must** redact include name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to any other party, race or ethnic background, telephone number, email address, social media profiles, online identifiers, contact information, or any other information from which that party's identity can be discerned, including images of the party using a pseudonym. (Code Civ. Proc., § 367.3(a)(1).) (See Code Civ. Proc., § 367.3(a)(2) for a list of "online identifiers.")



**W20-04****Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)**

All comments are verbatim.

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Joint Rules Subcommittee (JRS) Trial Court Presiding Judges Advisory Committee (TCPJAC), and the Court Executive Advisory Committee (CEAC)	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Impact on existing automated systems (e.g., case management system, accounting system, technology infrastructure or security equipment, Jury Plus/ACS, etc.)</li> <li>• Requires development of local rules and/or forms.</li> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> <li>• Other major fiscal or operational impacts</li> </ul> <p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>In order to determine the possible impact on existing case management systems, the JRS team sent a questionnaire to the CEO listserv asking the following questions. Nine courts responded to the survey and the impact comment is based on those responses.</p> <p>1. For civil cases can your case management systems create a “party” type or category that specifies that the person is filing under a pseudonym authorized under CCP 367.3?</p> <ul style="list-style-type: none"> <li>• 6 of the courts that responded believe that their case management systems (CMS) would be able to create a party type or category that could be used as a pseudonym. The courts indicating that they could create a pseudonym party type or category had both new and old CMS’s. Three courts indicated they could not do the fundamental requirement of CCP 367.3 by creating a pseudonym type in their CMS. Two</li> </ul>	<p>The committee appreciates the comments, and notes the commenter’s support for the proposal.</p> <p>The committee thanks the commenter for responding to the question.</p>

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

## W20-04

### Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)

All comments are verbatim.

		<p>of the courts that were incapable had relatively new CMS's, installed in the last 5 years that would require reconfiguration to comply with CCP 367.3.</p> <p>2. For civil cases, can your case management system insert an CCP 367.3 required pseudonym on all future filings?</p> <ul style="list-style-type: none"><li>• Four courts believe their current CMS can insert a pseudonym into future civil filings.</li></ul> <p>3. For civil cases, can your case management system change a defendant or respondent's name to a pseudonym after the case is underway?</p> <ul style="list-style-type: none"><li>• Six courts indicated that their current CMS could change a party's name to pseudonym after the case was already underway.</li></ul> <p>4. For civil cases, can your case management system create a confidential location within the case management system for the true name, address of the party and other identifier information for the person who requested the benefit of CCP 367.3 ?</p> <ul style="list-style-type: none"><li>• Five courts indicated that their current CMS could create a confidential location for the true name and other information or party requesting a pseudonym.</li></ul> <p>5. For civil cases, if your case management system can create a CCP 367.3 pseudonym, would it be possible for the case management system to cross reference a person with a CCP 367.3 pseudonym in their civil case filings across all of non-civil case types and filings?</p> <ul style="list-style-type: none"><li>• Only one court indicated that their case management system could cross reference the party using a pseudonym with non-civil case</li></ul>	<p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p>
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## W20-04

### Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)

All comments are verbatim.

		<p>filings. One court indicated they were not sure if they could cross reference and seven indicated it was not possible.</p> <p>Even though the number responses to the survey are not enough for the findings to be statistically valid, the responses are enlightening to what the potential challenges could be for courts to implement requirements of CCP 367.3. There is the likelihood that a substantial number of courts, possibly up to one third of the courts in the state, could have difficulty with their current case management systems to comply with CCP 367.3. The inability to comply is not limited to only courts with older legacy systems but also with courts that have newer case management systems. Compliance could be possible with reconfiguration of the courts case management system. However, that will take time and the ability to pay for the reconfiguration.</p> <p>It is very likely that the Judicial Council will develop state Rules of Court and forms to be used by parties requesting the use of a pseudonym. However, local courts often need to adapt forms that be to local needs and promulgate local rules.</p> <p>Court staff are familiar with pseudonyms being used in other case types. Training staff regarding the use of case types in civil matters pursuant to CCP 367.3 will be necessary but should not be a major challenge.</p> <p>For courts who have case management systems then are not able to create pseudonym case types or case categories, there will be cost for CMS reconfiguration. These costs may be difficult to estimate, since they can vary with</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**W20-04****Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)**

All comments are verbatim.

			the type of case management system and the technical ability to configure the system.	
2.	Orange County Bar Association by Scott B. Garner, President Newport Beach, California	AM	<p><b><i>Specific Comments:</i></b></p> <p>1) <b>Does the proposal appropriately address the stated purpose?</b> Yes. The proposal provides clear information about the purpose of the form, the confidential nature of the form, and for how to fill it out.</p> <p>2) <b>Should an alternative to the required declaration that the participant is part of the Safe at Home Program be used to ascertain eligibility?</b> No. The declaration seems to be a sufficient way to establish eligibility; requiring proof of status before filing the form could create delays potentially affecting the statute of limitations and/or deter participants at risk from seeking confidentiality. The proposed method requires the participant provide proof of being in the program should the court require it.</p> <p>3) <b>In a case where a protected party invokes the confidentiality protection after an initial pleading, can a motion to seal under rule 2.551 provide sufficient protection?</b> It seems to offer the best alternative where the information has already been publicly filed, since it allows the participant to request the pleadings containing confidential information be sealed.</p>	<p>The committee appreciates the comments. The committee thanks the commenter for responding to the question.</p> <p>The committee agrees that requiring additional proof would create delays, and has recommended retaining the form's declaration of active participation.</p> <p>The committee agrees that a motion under rule 2.551 is an available option, but is considering in the next rule-making cycle additional forms to assist filers in this process.</p>

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

**W20-04****Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)**

All comments are verbatim.

			<p>4) <b>Should all Judicial Council forms to be used by participants in the Safe at Home program be maintained in a single category and given the same identifying form prefix?</b> Yes. A uniform prefix (e.g., SH or SAH?) would immediately alert the court and court clerk the basis for the request, and also potentially facilitate finding and filling out the forms for the Safe at Home participants.</p> <p><b>Two small edits to the form:</b></p> <p>1) Page 2 in the Declaration box: The spacing is slightly off between the first and second lines of the declaration; it should be consistent.</p> <p>2) Page 2 of form, number 2., line 5: "file this form anytime, " should be "file this form any time."</p>	<p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p> <p>The committee thanks the commenter for these edits, and has revised the proposed form accordingly.</p>
3.	Public Law Center by Leigh E. Ferrin Director of Litigation and Pro Bono Santa Ana, California	AM	<p>Public Law Center (PLC) is a 501(c)(3) not-for-profit organization that provides free civil legal services to low-income individuals and families across Orange County. The civil legal services that we provide include consumer, family, immigration, housing, veterans, community organizations, and health law.</p> <p>PLC appreciates the opportunity to comment on Invitation W20-04, the proposal to adopt a new form, MC-130. PLC appreciates the need for this form and applauds the judicial council for proposing it. PLC regularly represents individuals who utilize the Safe at Home</p>	The committee appreciates the comments.

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

## W20-04

### Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)

All comments are verbatim.

		<p>program and who need to be able to withhold their information for their safety. During this representation we sometimes see these requests to withhold information declined, and we believe that the introduction of form MC-130 will be instrumental in making this a more regular practice.</p> <p>PLC believes that the declaration provided for on the form should be sufficient for proof of participation in Safe at Home. If the Court or others feel that there is a high likelihood of abuse of this process, especially since it is a form that can be used throughout the court system, then PLC would support exploring the burden it would put in litigants to have to attach proof of participation in the Safe at Home program. PLC would suggest that before implementing requiring a specific type of proof, advocates or proponents consult with representatives of the Safe at Home program and survivor advocates to determine how burdensome it is to obtain the proposed required evidence.</p> <p>We agree that a motion to seal under rule 2.551 would be sufficient, but that such a motion should include an order also amending the Register of Actions. When we do see the requests to invoke the confidentiality protection, we often see it done moving forward, but not on the register of actions itself.</p> <p>We support the creation of a form motion to seal specifically for parties who are responding to previously filed cases and need the</p>	<p>The committee agrees, and has recommended retaining the form's declaration of active participation.</p> <p>The committee is considering a proposal in the next rule-making cycle that addresses the register of actions.</p> <p>The committee is considering this proposal in the next rule-making cycle.</p>
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

**W20-04****Civil Practice and Procedure: Confidential Information Form Under Code of Civil Procedure Section 367.3 (Adopt form SH-001)**

All comments are verbatim.

			<p>confidentiality provisions to be retroactive. The accompanying order can then clearly specify that the order covers the prior documents, but also the register of actions. PLC also believes one option might be an optional attachment to the proposed MC-130, so that the motion to seal could be filed at the same time as the MC-130 form, thereby streamlining the process for the filer and for the court. This will also make it easier for defendants and other responsive participants to understand the need for multiple filings to completely seal a record.</p> <p>PLC strongly encourages the Judicial Council to create its own form category for these particular forms. They are sufficiently important and would benefit from a separate identification rather than “Miscellaneous.”</p>	<p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p>
4.	<p>Superior Court of Los Angeles County By Bryan Borys Director of Research and Data Management</p>	AM	<p>We recommend a change in the name of the form to make it clearer for self-represented litigants. Suggestion is “Confidential Information Form for Use of a Pseudonym under Code of Civil Procedure Section 367.3.”</p> <p>Page 1, #4-For consistency to other references throughout the form, we recommend using “blacked out” instead of “blanked-out.”</p> <p>Page 1, #4-For clarity to litigants, we recommend including underneath “redacted information,” a line that reads “See Paragraph 5 under the instructions on page 2, for a list of items that may be redacted.”</p>	<p>The committee appreciates the comments. The committee declined to recommend changing the form’s name as suggested because the form is to be used when other identifying information, as defined in the statute, has been redacted. The use of a pseudonym is just one use of the form.</p> <p>The committee has revised the form to make these terms consistent.</p> <p>The committee has revised the form to include an instruction to this effect in the <i>Information Redacted</i> box.</p>

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## W20-04

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		<p>Page 2, Instruction 2, It is unclear as it appears that it has contradictory statements. The first sentence states that the form must be filed the “first time” the pseudonym is used, however, the third sentence states that the form must be submitted with each document that has been redacted. We recommend replacing “first time” with “each time.”</p> <p>In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"><li>• Does the proposal appropriately address the stated purpose?</li></ul> <p>Yes</p> <ul style="list-style-type: none"><li>• The proposed form includes a declaration by the protected party to establish, at least initially, a party’s status as an active participant of the Safe at Home program. Should an alternative procedure should be used and, if so, what would that alternative be?</li></ul> <p>No alternative procedure is needed.</p> <ul style="list-style-type: none"><li>• In a case where a protected party invokes the confidentiality protection of section 367.3 after an initial pleading has been filed by another party, can a motion to seal under rule 2.551 provide sufficient protection of the protected party’s confidential information, or should an</li></ul>	<p>The committee has revised the form to require that it be filed each time a document is filed by a party using a pseudonym. The committee has proposed revisions to item 3 and instruction 2 that should clarify that the form is required every time a document is filed by a party using a pseudonym and each time a document with redacted content is filed by any party.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee agrees that a motion under rule 2.551 is an available option, but is considering recommending in the next rule-making cycle additional forms to assist filers in this process.</p>
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated



## W20-04

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All comments are verbatim.

		<p>alternative be considered? If an alternative is appropriate, describe what that should be.</p> <p>A motion to seal under CRC 2.551 is sufficient.</p> <ul style="list-style-type: none"><li>• Should all Judicial Council forms to be used only by participants in the Safe at Home program be maintained in a single category and given the same identifying form prefix?</li></ul> <p>JC forms used only by Safe at Home participants should be maintained in a single category and be given the same identifying prefix.</p> <p><b>The advisory committee also seeks comments from courts on the following cost and implementation matters:</b></p> <ul style="list-style-type: none"><li>• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</li></ul> <p>CMS configuration may be needed to address new/revised forms and sealing. Training for staff approximately 8 hours.</p> <ul style="list-style-type: none"><li>• Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</li></ul>	<p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p>
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All comments are verbatim.

			No. Training will likely be needed for clerical and courtroom staff if current procedures are revised. Implementation will likely take six months if configuration is not needed and at least 6 months if both are needed.	
5.	Superior Court of Oange County Family Law and Juvenile Court by Fen-Ru Chen Administrative Analyst	NI	<p><b>Request for Specific Comments</b></p> <ul style="list-style-type: none"> <li>• <b>Does the proposal appropriately address the stated purpose?</b> Yes.</li> <li>• <b>The proposed form includes a declaration by the protected party to establish, at least initially, a party's status as an active participant of the Safe at Home program. Should an alternative procedure be used, and, if so, what would that alternative be?</b> Recommend to require the applicant to bring to court the Identification Card that is given to active members of the program as the alternative procedure to be used.</li> <li>• <b>In a case where a protected party invokes the confidentiality protection of section 367.3 after an initial pleading has been filed by another party, can a motion to seal under rule 2.551 provide sufficient protection of the protected party's confidential information, or should an alternative be considered? If an alternative is appropriate, describe what that should be.</b> Yes.</li> </ul>	<p>The committee appreciates the comments.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee agrees that bringing an identification card to court may be one way to establish participation in the program, but doing so may not be adequate to establish active participation. (According to the Secretary of State, a party's participation in the program could be terminated before the expiration date on the card.) For this reason, the committee has declined to require filers to bring the card with them at the time of filing this form.</p> <p>The committee is considering the treatment of past filings and the Safe at Home program in the next rule-making and forms cycle.</p>

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All comments are verbatim.

			<p>Rule 2.551 does not address the past filings. To prevent the disclosure by the pre-existing filings, recommend to have an expediated process for the previous filings once the request is granted.</p> <ul style="list-style-type: none"><li>• <b>Should all Judicial Council forms to be used only by participants in the Safe at Home program be maintained in a single category and given the same identifying form prefix?</b> Yes, it would be beneficial for the participants to find the forms.</li><li>• <b>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b> Implementation would require staff training, procedure revision, and updates to the case management system.</li><li>• <b>Would three (3) months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation:</b> Yes.</li></ul>	<p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p>
6.	Superior Court of Orange County Civil and Appellate Division Management and Analyst Team	NI	Does the proposal appropriately address the state purpose?	The committee appreciates the comments, and thanks the commenter for responding to the question.

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

## W20-04

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All comments are verbatim.

		<p>The proposal appropriately addresses the stated purpose. Creating this new form will help the public as well as the court identify cases that require special handling under this new law.</p> <p>The proposed form includes a declaration by the protected party to establish, as least initially, a party's status as an active participant in the Safe at Home program. Should an alternative procedure be used, and, if so, what would that alternative be?</p> <p>The declaration is signed under penalty and perjury, which is a standard way for holding parties accountable and should be sufficient. The court can always inquire further as to active participation, either on its own motion or if brought by the opposing party.</p> <p>In a case where a protected party invoked confidentiality protection of section 367.3 after an initial pleading has been file by another party, can a motion to seal under rule 2.551 provide sufficient protection of the protected party's confidential information, or should an alternative be considered? If an alternative is appropriate, describe what that should be.</p> <p>If the request comes in after an initial pleading, a motion to seal is sufficient; however, the motion should be expedited, via ex parte. The court can then decide based on proof of participation provided or other representations made regarding participation.</p> <p>In order to address the protection of the requesting party, the motion to seal should be heard fairly quickly. Courts may handle such</p>	<p>The committee has recommended retaining the form's declaration of active participation.</p> <p>.</p> <p>The committee is considering this suggestion in the next rule-making cycle.</p>
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All comments are verbatim.

		<p>motions differently; however, it should be the party's responsibility to bring it to the court's attention in order to expedite hearing the motion.</p> <p>Should all Judicial Council forms to be used only by participants in the Safe at Home program be maintained in a single category and given the same identifying form prefix? Creating a single category and identifying prefix would be helpful for participants in the Safe at Home program to understand specifically what forms are to be used and in what legal actions.</p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p>Implementation of this new form would have minimal impact. A similar process related to other confidential information forms is already in place. Training would not be needed, drafting and posting a new procedure would be enough. The approximate level of effort is estimated at 2 hours FTE by a Program Coordinator Specialist over approximately two weeks to revise procedures, approve through workflow and post.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes, three months would be sufficient.</p>	<p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p> <p>The committee thanks the commenter for responding to the question.</p> <p>The committee thanks the commenter for responding to the question.</p>
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All comments are verbatim.

			<p>How well would this proposal work in courts of different sizes?</p> <p>Larger courts may be impacted with more of these filings, but workload is estimated to be low.</p>	<p>The committee thanks the commenter for responding to the question.</p>
7.	<p>Superior Court of San Diego County</p> <p>By Mike Roddy</p> <p>Executive Officer</p>	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>The proposed form includes a declaration by the protected party to establish, at least initially, a party's status as an active participant of the Safe at Home program. Should an alternative procedure should be used and, if so, what would that alternative be? Yes, the protected party should provide proof that they are an <u>active</u> participant in the Safe at Home program. Individuals may be terminated from the Safe at Home program, for reasons listed on the Secretary of State's website, and no longer covered by the program's protections.</p> <p>In a case where a protected party invokes the confidentiality protection of section 367.3 <i>after</i> an initial pleading has been filed by another party, can a motion to seal under rule 2.551 provide sufficient protection of the protected party's confidential information, or should an alternative be considered? If an alternative is appropriate, describe what that should be. A motion under rule 2.551 is sufficient.</p> <p>Should all Judicial Council forms to be used only by participants in the Safe at Home program be maintained in a single category and</p>	<p>The committee appreciates the comments, and notes the commenter's support for the proposal.</p> <p>The proposed form asks filers to certify their <i>active</i> participation in the program. The committee has recommended retaining the form's declaration of active participation, and requiring proof of participation only by court order.</p> <p>The committee agrees that a motion under rule 2.551 is an available option, but is considering recommending in the next rule-making cycle additional forms to assist filers in this process.</p> <p>The proposed form will be modified in accordance with this suggestion, as SH-001.</p>

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			<p>given the same identifying form prefix? Yes, it would benefit both the parties and court personnel.</p> <p>General Comment:</p> <p>Page 3 of the Invitation provides that “Receipt of this form is therefore likely to be the primary way plaintiffs and petitioners will learn that a defendant or respondent, <u>or an objector in a probate proceeding, is acting under section 367.3.</u>” Is it this committee’s position that that CCP 367.3 also applies to probate proceedings? Is the committee interpreting “civil proceeding” under 367.3(b)(1) to include the broader definition of civil (i.e. including family and probate actions)?</p>	<p>Yes, the committee is not aware of any limitation with respect to the scope of civil proceedings to which Code Civ. Proc., § 367.3 applies.</p>
8.	<p>The Executive Committee of the Family Law Section of the California Lawyers Association (FLEXCOM) by Justin M. O’Connell FLEXCOM Legislation Chair California Lawyers Association and Saul Bercovitch Director of Governmental Affairs California Lawyers Association</p>	A	<p>No specific comments provided.</p>	<p>The committee notes the commenter’s support for the proposal.</p>

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