



Judicial Council of California

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Title

Rules and Forms: Miscellaneous Technical Changes (Action Required)

Summary

Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

Recommendation

Judicial Council staff recommend that the council, effective January 1, 2018:

1. Amend rule 3.2300 of the California Rules of Court to conform to new law. Assembly Bill 90 (Weber), signed by the Governor on October 12, 2017, and effective January 1, 2018, amends Penal Code sections 186.34 and 186.35, which set out procedures for requesting the removal of an individual's name from a shared gang database, and for petitioning the court to review a law enforcement agency's denial of such a request.
Among other things, the amendments provide that a law enforcement agency's failure to respond to a written request for removal may be considered a "deemed denial" and be subject to court review just as a written denial is. The proposed amendments to rule 3.200 reflect this change in the law. The rule's cross-references to the statute and statutory text quoted in the Advisory Committee Comment have also been amended to reflect the amended statutes. The Judicial Council form used in conjunction with these rules also needs to be changed, but the changes are more extensive than may appropriately be done as technical changes.
2. Amend rule 10.855 to strike subdivision (j) entirely and reletter subdivision (k) as (j) and revoke form REC-003, *Report to The Judicial Council: Superior Court Records Destroyed, Preserved, and Transferred*, to conform to recent changes to statute. Assembly Bill 1443 (Levine), effective January 1, 2018, deletes the following sentence from Government Code section 68153(b): "A list of the court records destroyed within the jurisdiction of the superior court shall be provided to the Judicial Council in accordance with the California Rules of Court." The proposed amendment would delete subdivision (j) of rule 10.855, which details the reporting requirement that has been eliminated by statute and revoke

the form used to make the report.

3. Revise *Claim Opposing Forfeiture* (form MC-200) to comply with recent changes to statute addressing when a claim must be made. Specifically, in the Notice box, item 1 is revised so the last lines read “your claim within 30 days after the last time notice is first published in a newspaper.” The underlined text has been added, and the stricken text deleted. The same change has been made to the Spanish version of the notice.
4. Renumber forms MC-245, *Motion to Vacate Conviction or Sentence*, and MC-246, *Order on Motion to Vacate Conviction or Sentence*, which are two new optional forms, effective January 1, 2018. These forms are designed to assist self-represented individuals and the courts in implementing recent legislation that permits criminally convicted individuals no longer in custody to file a motion to vacate a conviction or sentence, and withdraw the plea of guilty or nolo contendere based on prejudicial errors related to immigration consequences or newly discovered evidence of actual innocence. These forms were originally designated as “Miscellaneous” forms, with “MC” preceding the form numbers, but it is more appropriate for them to be designated as “Criminal” forms, with “CR” preceding the form numbers because they address postconviction relief for criminally convicted individuals. In this way, the new forms are similar to forms CR- 180, CR-181, CR-183, CR-184, CR-185, and CR-186, all of which address postconviction relief or relief following arrest. It is especially appropriate to include these forms as “Criminal” forms because it is anticipated that self-represented individuals are likely to be the most common users of these forms, and it would be intuitive for those individuals, who are interested in obtaining postconviction relief, to look for the forms to accomplish that request in the “Criminal” section. For these reasons, form MC-245 should be renumbered as CR-187 and form MC-246 should be renumbered as CR-188.