

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W20-06

Title

Rules and Forms: Mandatory Form for Notification of a Party's Military Status

Action Requested

Review and submit comments by February 12, 2020

Proposed Rules, Forms, Standards, or Statutes

Revise form MIL-100

Proposed Effective Date

September 1, 2020

Proposed by

Collaborative Justice Courts Advisory Committee
Hon. Richard Vlavianos, Chair

Contact

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Executive Summary and Origin

The Collaborative Justice Courts Advisory Committee proposes revising *Notification of Military Status* (form MIL-100), which informs the court that a party in a court case is or was in the military, to change the form from optional to mandatory and require those individuals who choose to disclose military status to do so with the proposed form. The revisions to the current form will enable courts to improve early identification of court litigants in all case types who have a military affiliation, and will assist courts in complying with Penal Code section 858 requirements.

Background

In 2012, the Judicial Council of California received a letter, jointly authored by members of the judicial and legal communities, requesting that all mandatory Judicial Council forms be amended to include information about whether a party is a veteran of any branch of the U.S. armed forces. The request was rooted in the belief that providing the court with this information would allow it to better administer justice and better enable attorneys to represent the interests of their clients. The committee considered this request but determined that revising numerous forms, some of which have limited space, would create an undue workload burden on courts. Instead, the MIL-100 form was proposed and adopted in 2014 to provide a way for military service information to be provided to the court in all case types without the need to amend individual forms.

Senate Bill 1110 (Stats. 2014, ch. 655) amended Penal Code section 858, effective January 1, 2015, to direct the Judicial Council to revise the military service form to include information explaining the rights of individuals who have active duty or veteran status under Penal Code

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

section 1170.9 and related statutes, and to include a space for the local court to provide contact information for the county veterans service office. Revisions to the form incorporating these changes went into effect July 1, 2015. After the revised form was in use, confusion was expressed about the case types for which the form should be used. Although the military or veteran status of a party may be relevant in many kinds of court cases, the 2015 revisions made to be responsive to the requirements of Penal Code sections 858 and 1170.9 unintentionally gave the appearance that the MIL-100 was for use solely in criminal cases. Concerns were also raised that the form requested information that was not needed by the court, making the form unnecessarily difficult to complete.

Prior Circulation

In May 2019, a proposal to revise the MIL-100 was circulated for public comment. The proposed revisions were intended to make the MIL-100 easier to use in noncriminal cases, as well as to ensure consistent information by making the form mandatory. Due to the feedback received from commenters, the proposal to revise the MIL-100 was deferred from the spring 2019 cycle to the current cycle. This allowed the committee to incorporate changes suggested by commenters including honing the informational language on the form for clarity and comprehension, and addressing the effect of changing the form from optional to mandatory. Due to these suggested changes, the committee also wanted to allow for a period of additional public comment.

Of particular note, during the prior circulation the committee received a comment inquiring about the applicability of a filing fee for using this form. Because the intention of the form is to encourage sharing information that will improve case processing and court administration, the committee felt that a filing fee should not be required. The committee revised the form with the inclusion of additional language set off in a box at the bottom of the first page of the form that states: “No Filing Fee. No filing fee or court costs are to be charged for this form.”

Several public comments received during the prior circulation revealed some confusion about the effect that changing the form from optional to mandatory would have. Some commenters understood the proposed change to mean that individuals would have to disclose their former or current military status to the courts, regardless of their desire to do so, or that they would need to complete the form in every case, regardless of its applicability. Rule 1.31 of the California Rules of Court provides that mandatory forms are to be used wherever applicable and must be accepted for filing by all courts. In response to the comments received, clarifying language that disclosure of military history information is optional and voluntary has been added to the form.

The committee also received several comments with suggestions for improving the form’s instructions to make it easier for court users to understand how and why to complete the form. The MIL-100 form was revised to incorporate these suggestions.

Because the MIL-100 form can be filed in any case type, the Collaborative Justice Courts Advisory Committee also sought input from the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, and Criminal Law Advisory Committee. The

Collaborative Justice Courts Advisory Committee provided copies of the revised proposal and form, and asked for input from these committees on the potential impact in different case types. Suggested changes to the MIL-100 form from the committees were then made to the form. Each of the committees agreed with moving forward on the proposed revisions and circulating the proposal for comment.

The Proposal

Form Content

The Collaborative Justice Courts Advisory Committee proposes revising the MIL-100 to better inform users of the broad applicability of the form, while retaining all required notifications and information for parties in criminal cases. The revisions aim to employ user-friendly language and a simpler format.

Revisions to form MIL-100 include:

- Clarifying that that the form can be used by both former and current members of the state and federal armed services, including the reserves, by adding “Veteran/Reserve/Active” to the title of the form.
- Providing information as to when and how often the form may be filed.
- Indicating that no filing fees apply to this form by adding, to the bottom of the form on page 1, “No Filing Fee. No filing fee or court costs are to be charged for this form.”
- On page 2, providing better information on the form’s purpose by adding clarifying language and the statement, “Filling out the MIL-100 form is the way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time.”
- Ensuring understanding that disclosure of one’s military status is optional by including additional language and the statement in bold “You do not have to provide this information to the court” to the top of page 2, and stating “Giving this information to the court is voluntary” in the instructions.

Mandatory Form

The committee proposes that form MIL-100 be changed from an optional form to one that is mandatory. A mandatory form will ensure that when an individual chooses to disclose military status, the necessary information will be obtained in a consistent manner and will give parties in criminal matters the information that Penal Code section 858 requires be provided on the MIL-100. Making the form mandatory would not require an individual to disclose their military status to the court nor would it create a penalty if a person chose not to share their military history. The Collaborative Justice Courts Committee believes courts will be able to process cases more efficiently while improving the fair administration of justice through the consistent application and early consideration of possible benefits and protections across all case types in which military status is relevant.

Alternatives Considered

The issue of inconsistent identification of the military status of parties, especially in noncriminal cases, could be left unaddressed. However, this would not meet the needs of the former and current members of the military who are court involved. Revisions to form MIL-100 aim to simplify the form for ease of use, as well as make clear the broad applicability of the form and the possible relevance of military status to noncriminal cases. The committee carefully considered possible effects of a mandatory form, and concluded that the interests of justice would best be served by requiring those individuals who choose to disclose a military status to do so through a uniform, mandatory form.

Fiscal and Operational Impacts

This proposal to make changes to an existing form is unlikely to generate significant cost or operational impacts. The court is currently required to provide and accept the form for filing. The revisions to MIL-100 may impose additional printing costs for any courts that need to replace existing copies of this form with the revised form. There is the potential for cost savings if a court is aware at an early stage of a proceeding that a party to an action has a military affiliation, as it may reduce the chance of needing additional hearings to address this issue.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Do the revisions to the form appropriately address the stated purpose?
- Should the form include identification of different case types (Civil, Criminal, Family, Juvenile)?
- Should the form remain an optional form or should it become mandatory for those individuals who choose to disclose their military status?
- Are any additional revisions recommended?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) or revising processes and procedures (please describe)?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Form MIL-100, at pages 5–6

PERSON COMPLETING THIS FORM: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: STATE BAR NUMBER (IF APPLICABLE):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
NOTIFICATION OF MILITARY VETERAN/RESERVE/ACTIVE STATUS	CASE NUMBER:

1. This form is about (*name*): _____ who is a party in this case.

 2. The person listed in item 1 is:
 - A current member of the state or federal armed services or reserves.
 - A veteran of the state or federal armed services or reserves.
 Discharge Date: _____

 3. I am the person listed in item 1.
 an attorney in the above entitled case.
 other (*specify*): _____
- I am providing this notification to the court based on information and belief.

Date: _____

_____ _____

(TYPE OR PRINT NAME OF PERSON FILING THIS FORM) (SIGNATURE)

Notice

This form can be filed in any case type. If this form is being submitted in a criminal case, the court will send copies of the form to the county veterans service officer and the Department of Veterans Affairs.

Local County Veterans Services Office Information
 (to be provided by local court):

For court use only

No Filing Fee

No filing fee or court costs are to be charged for this form (Mil. & Vet. Code, § 409.14)

**YOU SHOULD TALK WITH YOUR ATTORNEY (IF YOU HAVE ONE) ABOUT THE
FOLLOWING INFORMATION**

You do not have to provide this information to the court.

If you are a current or former member of the state or federal armed services or reserves, you may be entitled to certain rights under the law. Filling out the MIL-100 form is the way you can let the court know about your military experience. This information may help the court consider possible benefits and protections in your case. This form can be used for any type of case and can be filled out at any time. Giving this information to the court is voluntary. The MIL-100 only needs to be filled out with the court one time per case.

NON CRIMINAL CASES

If you are a party to a non criminal case, (i.e., civil, family, juvenile, etc.) be sure to complete all the appropriate forms needed for your court case.

For example, filing of this form does not substitute for the filing of other required forms or petitions in cases where you are filing:

- For relief from financial obligation during military service;
- A notification of military deployment and request to modify a support order; or
- For other relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043).

Please see *Notice of Petition and Petition for Relief from Financial Obligation During Military Service* (form MIL-010) and *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order* (form FL-398).

CRIMINAL CASES

If you are a party to a criminal case, you are not required to have an honorable discharge, to have combat service, or to be accepted into or involved in a Veterans Court to be eligible for the possible rights and protections under the law.

If you are a current or former member of the state or federal armed services or reserves who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), posttraumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be eligible for certain rights under the law. Some examples of benefits for a defendant in a criminal case who is a veteran or is on active duty or in the reserves include possible consideration for alternative sentencing, restorative relief such as sealing your record, and diversion in misdemeanor cases.

Below is a brief description of possible rights and protections under the following California laws:

California Penal Code section 1170.9

- Treatment instead of prison or jail time for certain crimes;
- A greater chance of receiving probation;
- Conditions of probation deemed satisfied early, other than any victim restitution ordered;
- Felonies reduced to misdemeanors; and
- Restoration of rights, dismissal of penalties, and/or setting aside of conviction for certain crimes.

California Penal Code section 1001.80

- Pretrial diversion program instead of trial and potential conviction and incarceration;
- Dismissal of eligible criminal charges following satisfactory performance in program; and
- Arrest deemed to have "never occurred" as part of restoration of rights following successful completion of program.

California Penal Code section 1170.91

- The court must consider circumstances from which the defendant may be suffering as a result of military service as a factor in mitigation during felony sentencing, which could result in a more lenient sentence.

If you submit this form in a criminal case, you or your attorney must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.