

Judicial Council of California

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INVITATION TO COMMENT

W15-02

Title	Action Requested
Civil Forms: Confidential Information Form	Review and submit comments by January 23, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt form MC-125	July 1, 2015
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne M. Ronan, Legal Services
Hon. Patricia M. Lucas, Chair	415-865-8933 anne.ronan@jud.ca.gov

Executive Summary and Origin

The proposed new *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125) has been developed to implement Assembly Bill 2643 (Stats. 2014, ch. 859). That new law creates a private right of action against a person who distributes sexually explicit material and authorizes a plaintiff in such an action to proceed using a pseudonym instead of his or her true name. In addition, all parties are to avoid or redact certain identifying information from any pleading filed in the action. The law mandates that the Judicial Council, by July 1, 2015, adopt a confidential information form on which the parties are to provide the plaintiff's true name and any redacted material to the court, so that the information may be kept outside the public record.

The Proposal

The Civil and Small Claims Advisory Committee is proposing a new confidential information form as mandated by AB 2643.¹

The new law provides that a plaintiff bringing an action for wrongful distribution of sexually explicit materials may file the action using a pseudonym—either John Doe, Jane Doe, or Doe—for the true name of the plaintiff and may exclude or redact from all pleadings and documents filed in the action other identifying characteristics of the plaintiff.² (See new Civ.

¹ Assembly Bill 2643 is available online at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2643

² “As used in this subdivision, ‘identifying characteristics’ includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.” (Civ. Code, § 1708.85(f)(3).)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

1708.85(f)(1).³) All papers and pleadings filed by other parties are also to be worded so as to protect the name or other identifying characteristics from the public record. (§ 1708.85(f)(2).) The responsibility for excluding or redacting the name or identifying characteristics from the primary documents filed with the court (the complaint, answer, or motion papers) rests solely with the parties and their attorneys, not the court. (§ 1708.85(f)(4).)

The redacted information does, however, have to be provided to the court, although it is to be kept confidential. A plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in the new law must file with the court and serve upon the defendant a confidential information form that includes the plaintiff's name and any other identifying characteristics excluded or redacted from the complaint.(§ 1708.85(f)(1).) The court is responsible for keeping confidential the plaintiff's name and any excluded or redacted information provided to it on the form. (§ 1708.85(f)(1).) Because other parties are also required to keep such information from the public record, any other party who redacts identifying characteristics from a filed document will also need to provide the confidential information to the court.

The proposed *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125) has been drafted to allow the redacted information, including the name of the plaintiff, to be provided to the court while, at the same time, being kept out of the public record.

- The form begins with a reminder to the court clerk that it is a confidential form (and not to be placed in the public files).
- Item 1 asserts that the form is being used in an action under section 1708.85 so that parties in other types of actions will not mistakenly use the form.
- Item 2 identifies for which pleading or document the confidential form provides redacted information.
- Item 3, to be used if the form is being filed with a complaint, provides the true name of any plaintiff or plaintiffs who are using a pseudonym.
- Item 4 provides the court and other parties in the action with the confidential information that has been redacted from the pleading or document that is filed in the public record.

Additional spaces for providing redacted information, a signature block, and instructions for the filer are provided on the back of the form. The form also provides that an additional page or pages may be attached if more space is required for identifying redacted information.

Alternatives Considered

The committee considered making this form available only for the plaintiff's use, as the statute only *expressly* mandates that “[a] plaintiff who proceeds using a pseudonym and excluding or redacting identifying characteristics as provided in this section shall file with the court and serve

³ Unless otherwise identified, all statutory references in this document are to the new Civil Code section 1708.85, which will become effective July 1, 2015.

upon the defendant a confidential information form.” See § 1708.85(f)(1). However, the committee concluded that because the statute requires the defendant or other parties also to ensure that confidential identifying characteristics not be included in documents filed with the court, and places the responsibility for redacting such information with the parties, the form should be available for use by defendants and other parties as well as by the plaintiff.

Implementation Requirements, Costs, and Operational Impacts

Some training will be involved for court clerks and judicial officers regarding the new procedures under Civil Code section 1708.85, and this form will need to be part of that training. Because the form is mandated by legislation, it must be adopted in any event.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed *Confidential Information Form Under Civil Code Section 1708.85* (form MC-125), at pages 4–5

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. :	FOR COURT USE ONLY DRAFT 11/17/14 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
SHORT TITLE:		
CONFIDENTIAL INFORMATION FORM UNDER CIVIL CODE SECTION 1708.85		CASE NUMBER:
TO COURT CLERK: THIS FORM IS CONFIDENTIAL		

INSTRUCTIONS FOR FILER ARE ON BACK

- This action includes a claim under Civil Code section 1708.85.
- The document with which this form is being filed is a
 - a. Complaint
 - b. Other (describe):
- Name of Plaintiff** (complete if being filed with complaint)
 - a. Plaintiff did not use a pseudonym in the complaint.
 - b. Plaintiff used a pseudonym in the complaint (complete the following for each plaintiff for whom a pseudonym was used).

<u>Pseudonym used</u>	<u>True name of plaintiff</u>
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4. **Redacted Information** (complete for any pleading or document that includes redactions)

	LOCATION OF REDACTION (page and line where the redaction occurs)	INFORMATION REDACTED (text that has been redacted)
1.		
2.		
3.		

Continued on next page.

SHORT TITLE:	CASE NUMBER:
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	LOCATION OF REDACTION <i>(page and line where the redaction occurs)</i>	INFORMATION REDACTED <i>(text that has been redacted)</i>
4.		
5.		
6.		
7.		

Additional pages are attached. Number of pages attached:

Date:

(TYPE OR PRINT NAME)

 _____
(SIGNATURE)

INSTRUCTIONS

(Note: This form may be used only in cases brought under Civil Code Section 1708.85.)

1. To protect personal privacy issues, parties who bring an action under Civil Code section 1708.85 for distribution of sexually explicit material may use a pseudonym in place of the true name of the plaintiff and may exclude or redact from all pleadings and documents other identifying characteristics. See Civ. Code, § 1708.85(f)(1). Papers filed by other parties must be worded so as to protect the name or other identifying characteristics of the plaintiff from public revelation. See Civ. Code, § 1708.85(f)(2).
2. A plaintiff who uses a pseudonym must file this confidential information form with the court at the time of filing the complaint, with items 2 and 3 completed, in order to provide his or her true name to the court. Plaintiff must also serve the form on defendant along with the complaint and summons.
3. Any party who redacts identifying characteristics from any pleading or document filed with the court must file with the court and serve on all parties this confidential information form, with items 2 and 4 completed, providing any identifying characteristics that have been redacted from the pleading or document and stating where the information was redacted.
4. "Identifying characteristics" that may be redacted under Civil Code section 1708.85 include, but are not limited to, name or any part thereof, address or any part thereof, city or area of residence, age, marital status, relationship to defendant, and race or ethnic background.
5. If more space is needed to describe all the redactions in a pleading or document, form MC-025 may be attached, with information provided in the same format as in item 4.
6. A copy of this form should be completed each time a pleading or document redacted under Civil Code section 1708.85 is filed and should be served and filed along with the redacted document.