

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR19-14

Title	Action Requested
Rules and Forms: Mandatory Form for Notification of a Party's Military Status	Review and submit comments by June 10, 2019
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form MIL-100	January 1, 2020
Proposed by	Contact
Collaborative Justice Courts Advisory Committee Hon. Richard Vlavianos, Chair	Jenie Chang, 415-865-4268 jenie.chang@jud.ca.gov

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 and changing the form from optional to mandatory. The revisions to the current form will enable courts to provide improved identification of court litigants in all case types who have a military affiliation.

Background

In 2012 the Administrative Office of the Courts received a letter, jointly authored by members of the judicial and legal communities, requesting amendment of all mandatory Judicial Council forms 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 a workload burden on courts at that challenging fiscal time. The MIL-100 form was adopted in 2014 to address this request.

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 section 1170.9 and related statutes and to include a space for the local court to provide contact

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 These proposals are circulated for comment purposes only.

information for the county veterans service office. Revisions to the form incorporating these changes went into effect July 1, 2015.

The Proposal

This proposal revises the current form MIL-100 to better inform users of the broad applicability of the form, including in noncriminal cases, while retaining all required notifications and information for parties in criminal cases. The revisions aim to employ user-friendly language and a simpler format for parties to identify as currently or formerly serving in the armed forces and provide relevant information to the court.

While the military or veteran status of a party may be relevant in many different kinds of court cases, the current form MIL-100 has the appearance of being primarily applicable in criminal cases. This is because the information on the form is predominantly directed at parties in criminal proceedings following revisions intended to be responsive to the requirements of Penal Code sections 858 and 1170.9. There are no other Judicial Council forms that can be used to notify the court of a party's military status in any case type.

Form MIL-100 is intended for use in all case types to notify a court of a party's military status. Given the relevance of military status in many cases beyond criminal, this form seeks to inform all courts, not only criminal courts. For example, use of the form in family law cases could alert the court or the court-appointed child custody mediator or evaluator that a party may be eligible for services provided by the military or that visitation schedules may need to consider active duty responsibilities. Since the form is intended to cover family law and civil case types, a sentence has been added to the notice box cautioning that litigants filing for relief under the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901–4043) must still complete the applicable military or family law forms

The committee proposes revisions to form MIL-100 as follows:

- Add “Veteran” to the title of the form.
- Replace “Attorney or Party Without Attorney” with “Person Completing This Form.”
- Add “State Bar Number (if applicable).”
- Move the “Consult your attorney ...” and “You may decline ...” statements to page 2, consolidating all information and notices on a single page.
- Replace item 1 “I...Declare as follows” with “This form is about (name) who is a party in a.”
- Add “criminal,” “family,” “juvenile,” “civil,” and “other” case types as check box options in item 1.
- Replace “I am currently a member of” in item 2 with “The person this form is about is:” to accommodate different users of the form.
- Delete “My entry date is:” from item 2 as it is unnecessary.
- Replace “I was discharged on” in item 3 with “discharge date” and move to item 2.
- Delete “I used to serve in the state or federal armed services or reserves” in item 3.

- Add “A current member of the state or federal armed services or reserves” as a selection option to item 2.
- Add “A veteran of the state or federal armed services or reserves” as a selection option to item 2.
- Move item 4 to bottom of the page as a notice.
- Replace “I am filing this form on behalf of:” with “I am filling out this form about:” in item 5 and renumber it as item 3.
- Add “I am the attorney for the person in item 2 above, whom I am informed and believe is a current member or veteran of the state and federal armed services” as item 4.
- Move the notice and the attendant provisions from page 1 to page 2.
- Add abbreviations of medical conditions listed on page 2 (e.g., “PTSD”).
- Add to page 2 the statement “Letting the court know about your military experience may allow consideration of possible benefits and protections for your case.”

Mandatory form

The committee proposes that form MIL-100 be changed from an optional form to a mandatory form. 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 consideration of possible benefits and protections across all case types in which military status is relevant. Use of the form will ensure the necessary information is obtained and available for future proceedings. Moreover, Penal Code 858 requires the court to inform criminal defendants that they may request this form and file it with the court.

Alternatives Considered

The issue of inconsistent identification of the military status of parties in noncriminal cases could be left unaddressed, as it has been until now. 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 those cases outside of criminal. The committee carefully considered possible effects of a mandatory form and concluded the interests of justice would best be served by a mandatory form.

Fiscal and Operational Impacts

This proposal is unlikely to generate significant cost or operational impacts beyond the cost for courts to reproduce paper copies of the forms. The committee does not anticipate that this proposal will result in any costs to the branch nor any requirements for implementation. 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 remain an optional form or should it become mandatory?
- Should the form be two separate forms, one for criminal cases, one for civil cases?
- 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 page 5

PERSON COMPLETING THIS FORM: NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL 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 STATUS	CASE NUMBER:

1. This form is about (*name*): who is a party in a court case.
 criminal family juvenile civil other (*specify*):

2. The person this form is about 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 not a party to this case. I am filing out this form about: a party to the above entitled case.

4. I am an attorney in the above entitled case. I am informed and believe the person in item 1 is a current member or veteran of the state or federal armed services.

Date: _____

(TYPE OR PRINT NAME) ▶ (SIGNATURE)

Notice

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):

YOU SHOULD CONSULT WITH YOUR ATTORNEY ABOUT THE FOLLOWING INFORMATION

If you are a current or former member of any branch of the U.S. Military, you may be entitled to certain rights under the law. Filing out the MIL-100 form is a way you can let the court know about your military status. Letting the court know about your military experience may allow consideration of possible benefits and protections for your case.

If you are a party to a civil or non-criminal case, you must complete the appropriate forms, which may include those listed below.

Filing of this form does not substitute for the filing of other required forms or petitions for your court case.

If 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).

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.

Some examples of benefits for a defendant in a criminal case who is a veteran or is on active duty include possible consideration for alternative sentencing and restorative relief, and diversion in misdemeanor cases. If you are a current or former member of any branch of the U.S. military who may be suffering from sexual trauma, also known as military sexual trauma (MST), traumatic brain injury (TBI), post traumatic stress disorder (PTSD), substance abuse, or mental health issues as a result of your military service, and charged with a crime, you may be entitled to certain rights under the following California laws:

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, and early termination of probation;
- Felonies reduced to misdemeanors;
- 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;
- 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 must file it with the court and serve a copy of it on the prosecuting attorney and defense counsel.