

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR22-02

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<b>Title</b>	<b>Action Requested</b>
Rules and Forms: Update Language Referring to Persons with Disabilities	Review and submit comments by May 13, 2022
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Cal. Rules of Court, rules 8.482, 8.483, and 8.631; revise form APP-060	January 1, 2023
<b>Proposed by</b>	<b>Contact</b>
Appellate Advisory Committee Hon. Louis R. Mauro, Chair	Christy Simons, 415-865-7694 <a href="mailto:christy.simons@jud.ca.gov">christy.simons@jud.ca.gov</a>

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### Executive Summary and Origin

The Appellate Advisory Committee proposes updating language in several rules and a form to reflect guidelines for referring to persons with disabilities and terminology changes in California statutes. The proposal is based on a suggestion from a county bar association.

### Background

In 1990, the federal government passed the Americans with Disabilities Act (ADA),<sup>1</sup> which prohibits discrimination against individuals with disabilities in all areas of public life. The ADA National Network (ADANN) consists of 10 regional centers that provide information, guidance, and training on implementing the ADA.<sup>2</sup> The ADANN has published *Guidelines for Writing About People With Disabilities* (Guidelines),<sup>3</sup> which encourages the use of language consistent with the principles of the ADA, including “portraying individuals with disabilities in a respectful and balanced way by using language that is accurate, neutral and objective.”<sup>4</sup>

According to the Guidelines, generally, the person should be referred to first and the disability second: “People with disabilities are, first and foremost, people. Labeling a person equates the

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<sup>1</sup> 42 U.S.C. § 12101 et seq.

<sup>2</sup> See ADA National Network, <https://adata.org/national-network>.

<sup>3</sup> The Guidelines may be accessed at <https://adata.org/factsheet/ADANN-writing>.

<sup>4</sup> Guidelines.

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 It is circulated for comment purposes only.*

person with a condition and can be disrespectful and dehumanizing. A person isn't a disability, condition or diagnosis; a person *has* a disability, condition or diagnosis. This is called Person-First Language.”<sup>5</sup> For example, instead of writing that a person is “mentally ill,” write that a person “has a mental health condition”; instead of “[t]he disabled,” write “[p]eople with disabilities.”<sup>6</sup>

Over time, the California Legislature has updated the state’s codes to remove “offensive or stigmatizing language referring to mental health disorders.”<sup>7</sup> In 2019, the Legislature replaced terms used in the Penal Code to describe mental health conditions and individuals with mental health conditions.<sup>8</sup> Specifically, references to a person as a “mentally disordered offender”<sup>9</sup> were changed to “offender with a mental health disorder.”<sup>10</sup> Also, the phrase “a person who is incompetent as a result of a mental disorder, but is also developmentally disabled,” was changed to “a person who is incompetent as a result of a mental disorder, but also has a developmental disability.”<sup>11</sup> In 2012, references to “a mentally retarded person” were replaced with “a person with an intellectual disability.”<sup>12</sup>

Rule 8.482, Appeal from judgment authorizing conservator to consent to sterilization of conservatee, was adopted in 2005 as rule 39.1. It was amended and renumbered as rule 8.482 in 2007. It was amended again effective January 1, 2016, as part of a rules modernization project. The amendments have no bearing on this proposal.

Rule 8.483, Appeal from an order of civil commitment, was adopted, and form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*, was approved for optional use, effective January 1, 2020, to assist litigants and the courts in civil commitment appeals. The rule and form have not been modified since their effective date.

Rule 8.631, Applications to file overlength briefs in appeals from a judgment of death, was adopted in 2008. It has not previously been amended.

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<sup>5</sup> *Ibid.*

<sup>6</sup> See Kathie Snow, *To Ensure Inclusion, Freedom, and Respect for All, It's Time to Embrace People First Language* (2009), p. 4, [http://www.inclusioncollaborative.org/docs/Person-First-Language-Article\\_Kathie\\_Snow.pdf](http://www.inclusioncollaborative.org/docs/Person-First-Language-Article_Kathie_Snow.pdf).

<sup>7</sup> Assem. Jud. Com., Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Mar. 21, 2019, p. 1.

<sup>8</sup> See Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Assem. Bill No. 46 (2019–2020 Reg. Sess.) as amended Apr. 24, 2019, p. 1.

<sup>9</sup> See former Pen. Code, § 2960 et seq.

<sup>10</sup> Pen. Code, § 2962(d)(3), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 7).

<sup>11</sup> Pen. Code, § 1367(b), eff. Jan. 1, 2020 (Stats. 2019, ch. 9, § 4).

<sup>12</sup> Pen. Code, § 2962(a)(2) (Stats. 2012, ch. 448, § 43); Welf. & Inst. Code, § 6513 (Stats. 2012, ch. 457, § 55).

## The Proposal

The proposal would remove outdated and disfavored terms in several rules and a form and replace them with more respectful terms that reflect the Guidelines and recent statutory amendments. Improving the language of these rules and the form is also consistent with *The Strategic Plan for California’s Judicial Branch*, specifically the goals of Access, Fairness, and Diversity (Goal I) and Quality of Justice and Service to the Public (Goal IV).<sup>13</sup>

Rule 8.482, which governs appeals from a judgment authorizing a conservator to consent to sterilization of a conservatee, contains the term “developmentally disabled adult conservatee.” This would be replaced with “adult conservatee with a developmental disability.”

Rule 8.483, regarding appeals from an order of civil commitment, contains the term “mentally disordered offenders.” This would be replaced with “offenders with mental health disorders.” The rule also refers to “developmentally disabled persons,” citing Welfare and Institutions Code section 6500. The committee proposes replacing this term with “dangerous persons with developmental disabilities” to update the language and track the statutory commitment criteria.<sup>14</sup> The same changes would be made to form APP-060, *Notice of Appeal—Civil Commitment/Mental Health Proceedings*.

An advisory committee comment to rule 8.631, which addresses applications to file overlength briefs in appeals from a judgment of death, includes “whether the defendant is mentally retarded” as an example of unusual, factually intensive, or legally complex hearings. The committee proposes replacing this language with “whether the defendant has an intellectual disability.”<sup>15</sup>

In addition, the committee proposes correcting several subdivision headings in the advisory committee comment to rule 8.631 that are labeled incorrectly:

- “Subdivision (c)(1)(A)” would be corrected to “Subdivision (c)(1).”
- “Subdivision (c)(1)(E)” would be corrected to “Subdivision (c)(5).”
- “Subdivision (c)(1)(E)–(I)” would be corrected to “Subdivision (c)(5)–(8).”
- “Subdivision (c)(1)(I)” would be corrected to “Subdivision (c)(7).”

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<sup>13</sup> The strategic plan may be accessed at <https://www.courts.ca.gov/3045.htm>.

<sup>14</sup> See Welf. & Inst. Code, § 6500(b)(1).

<sup>15</sup> As noted above, “intellectual disability” replaced the outdated term “mental retardation.” (Stats. 2012, ch. 457, § 1 (2012).) This is distinguished from a developmental disability which is both broader, in that it includes other disabilities, such as autism spectrum disorders and epilepsy, and narrower, in that it must have begun before the person reached 18 years of age. (Welf. & Inst. Code, § 4512(a)(1).)

## Alternatives Considered

The committee did not consider taking no action because the language in these rules and the form is outdated and inconsistent with the Guidelines, statutory language, and judicial branch goals.

The committee noted that the Legislature has not updated or revised the term “mentally disordered sex offender” and decided not to propose changing it because it is frequently used in the Penal Code and other laws.

## Fiscal and Operational Impacts

Fiscal or operational impacts, if any, are expected to be minimal. The benefits of the proposal, including using respectful language in rules and forms, likely outweigh any potential cost.

### 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?
- Are there any other instances of language in the appellate rules or forms that should be similarly updated?

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

- 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 3 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

## Attachments and Links

1. Cal. Rules of Court, rules 8.482, 8.483, and 8.631, at pages 5–7
2. Form APP-060, at page 8

Rules 8.482, 8.483, and 8.631 of the California Rules of Court would be amended, effective January 1, 2023, to read:

1 **Rule 8.482. Appeal from judgment authorizing conservator to consent to**  
2 **sterilization of conservatee**

3  
4 **(a) Application**

5  
6 Except as otherwise provided in this rule, rules 8.304–8.368 and 8.508 govern  
7 appeals from judgments authorizing a conservator to consent to the sterilization of  
8 ~~a developmentally disabled~~ an adult conservatee with a developmental disability.

9  
10 **(b) When appeal is taken automatically**

11  
12 An appeal from a judgment authorizing a conservator to consent to the sterilization  
13 of ~~a developmentally disabled~~ an adult conservatee with a developmental disability  
14 is taken automatically, without any action by the conservatee, when the judgment is  
15 rendered.

16  
17 **(c)–(i) \* \* \***

18  
19 **Rule 8.483. Appeal from order of civil commitment**

20  
21 **(a) Application and contents**

22  
23 (1) Application

24  
25 Except as otherwise provided in this rule, rules 8.300–8.368 and 8.508  
26 govern appeals from civil commitment orders under Penal Code sections  
27 1026 et seq. (not guilty by reason of insanity), 1370 et seq. (incompetent to  
28 stand trial), 1600 et seq. (outpatient placement and revocation), and 2962 et  
29 seq. (~~mentally disordered~~ offenders with mental health disorders); Welfare  
30 and Institutions Code sections 1800 et seq. (extended detention of dangerous  
31 persons), 6500 et seq. (~~developmentally disabled~~ dangerous persons with  
32 developmental disabilities), and 6600 et seq. (sexually violent predators); and  
33 former Welfare and Institutions Code section 6300 et seq. (mentally  
34 disordered sex offenders).

35  
36 (2) Contents

37  
38 \* \* \*

39  
40 **(b)–(e) \* \* \***

41

1 **Rule 8.631. Applications to file overlength briefs in appeals from a judgment of**  
2 **death**

3  
4 **(a)–(b) \* \* \***

5  
6 **(c) Factors considered**

7  
8 The court will consider the following factors in determining whether good cause  
9 exists to grant an application to file a brief that exceeds the limit set by rule 8.630:

10  
11 (1) The unusual length of the record. A party relying on this factor must specify  
12 the length of each of the following components of the record:

13  
14 (A) The reporter’s transcript;

15  
16 (B) The clerk’s transcript; and

17  
18 (C) The portion of the clerk’s transcript that is made up of juror  
19 questionnaires.

20  
21 (2) The number of codefendants in the case and whether they were tried  
22 separately from the appellant;

23  
24 (3) The number of homicide victims in the case and whether the homicides  
25 occurred in more than one incident;

26  
27 (4) The number of other crimes in the case and whether they occurred in more  
28 than one incident;

29  
30 (5) The number of rulings by the trial court on unusual, factually intensive, or  
31 legally complex motions that the party may assert are erroneous and  
32 prejudicial. A party relying on this factor must briefly describe the nature of  
33 these motions;

34  
35 (6) The number of rulings on objections by the trial court that the party may  
36 assert are erroneous and prejudicial;

37  
38 (7) The number and nature of unusual, factually intensive, or legally complex  
39 hearings held in the trial court that the party may assert raise issues on  
40 appeal; and  
41

1 (8) Any other factor that is likely to contribute to an unusually high number of  
2 issues or unusually complex issues on appeal. A party relying on this factor  
3 must briefly specify those issues.  
4

5 (d) \* \* \*

6  
7 **Advisory Committee Comment**  
8

9 **Subdivision (a).** \* \* \*

10  
11 **Subdivision (c)(1)(A).** As in guideline 8 of the Supreme Court’s Guidelines for Fixed Fee  
12 Appointments, juror questionnaires generally will not be taken into account in considering  
13 whether the length of the record is unusual unless these questionnaires are relevant to an issue on  
14 appeal. A record of 10,000 pages or less, excluding juror questionnaires, is not considered a  
15 record of unusual length; 70 percent of the records in capital appeals filed between 2001 and 2004  
16 were 10,000 pages or less, excluding juror questionnaires.  
17

18 **Subdivision ~~(e)(1)(E)~~(c)(5).** Examples of unusual, factually intensive, or legally complex  
19 motions include motions to change venue, admit scientific evidence, or determine competency.  
20

21 **Subdivisions ~~(e)(1)(E)~~ ~~(1)(c)(5)~~–(8).** Because an application must be filed before briefing is  
22 completed, the issues identified in the application will be those that the party anticipates *may* be  
23 raised on appeal. If the party does not ultimately raise all of these issues on appeal, the party is  
24 expected to have reduced the length of the brief accordingly.  
25

26 **Subdivision ~~(e)(1)(E)~~(c)(7).** Examples of unusual, factually intensive, or legally complex hearings  
27 include jury composition proceedings and hearings to determine the defendant’s competency or  
28 sanity, whether the defendant ~~is mentally retarded~~ has an intellectual disability, and whether the  
29 defendant may ~~represent himself or herself~~ be self-represented.  
30

31 **Subdivision (d)(1)(A)(ii).** To allow the deadline for an application to file an overlength brief to  
32 be appropriately tied to the deadline for filing that brief, if counsel requests an extension of time  
33 to file a brief, the court will specify in its order regarding the request to extend the time to file the  
34 brief, when any application to file an overlength brief is due. Although the order will specify the  
35 deadline by which an application must be filed, counsel are encouraged to file such applications  
36 sooner, if possible.  
37

38 **Subdivision (d)(3).** \* \* \*

39

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>03/08/2022</b>  <b>Not Approved by the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>	
CASE NAME:	
DEFENDANT/RESPONDENT:	
<b>NOTICE OF APPEAL—CIVIL COMMITMENT/ MENTAL HEALTH PROCEEDINGS</b>	CASE NUMBER: _____

**NOTICE**

**You must file this form in the SUPERIOR COURT WITHIN 60 DAYS after the court rendered the judgment or made the order you are appealing.**

1. Defendant/Respondent (the person subject to the civil commitment) appeals from a judgment rendered or an order of commitment or conservatorship made by the superior court.  
 NAME of Defendant/Respondent: \_\_\_\_\_  
 DATE of the order or judgment: \_\_\_\_\_
  
2. This appeal is (*check one*):
  - a.  after a jury or court trial.
  - b.  after a contested hearing.
  - c.  after an admission, stipulation, or submission.
  - d.  other (*specify*): \_\_\_\_\_
  
3. Defendant/Respondent is currently being held under:
  - Penal Code, § 1026 et seq. (not guilty by reason of insanity)
  - Penal Code, § 1370 et seq. (incompetent to stand trial)
  - Penal Code, § 1600 et seq. (return to confinement)
  - Penal Code, § 2962 et seq. (**offenders with mental health disorders**)
  - Welfare & Institutions Code, § 1800 et seq. (extended detention of dangerous persons)
  - Welfare & Institutions Code, § 5300 et seq. (LPS Act commitments)
  - Welfare & Institutions Code, § 5350 et seq. (LPS Act conservatorships)
  - Former Welfare & Institutions Code, § 6300 et seq. (MDSO)
  - Welfare & Institutions Code, § 6500 et seq. (**dangerous persons with developmental disabilities**)
  - Welfare & Institutions Code, § 6600 et seq. (sexually violent predators)
  - Other (*specify*): \_\_\_\_\_
  
4.  Defendant/Respondent requests that the court appoint an attorney for this appeal. Defendant/Respondent:
  - was  was not represented by an appointed attorney in the superior court.
  
5. Defendant/Respondent's mailing address is  same as in ATTORNEY OR PARTY WITHOUT ATTORNEY box above.  
 as follows: \_\_\_\_\_

Date: \_\_\_\_\_

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\_\_\_\_\_  
 (TYPE OR PRINT NAME)

\_\_\_\_\_  
 (SIGNATURE OF DEFENDANT/RESPONDENT OR ATTORNEY)