January 6, 2025

The Honorable Jayne Chong-Soon Lee, Chair
Probate and Mental Health Advisory Committee
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Judicial Council of California - Rules and Forms: Additional CARE Act Legislation (W25-08)

Dear Judge Chong-Soon Lee:

On behalf of the Rural County Representatives of California (RCRC), California State Association of Counties (CSAC), and the Urban Counties of California (UCC), thank you for the opportunity to comment on the "Rules and Forms: Additional CARE Act Legislation" proposal. Counties play a central role in implementing the CARE Act, and the experiences of Cohort 1 counties over the last year have provided unique insights into the opportunities and challenges of CARE Act proceedings.

Overall, the proposed rules and forms are well-suited to implement the CARE Act legislation enacted during the 2023-24 legislative session – with one significant exception. The Advisory Committee's "determin[ation] that it would be in the best interest of respondents, as well as the success and effectiveness of the CARE Act as a whole, to maintain the current personal service requirement" fails to properly balance the undisputed need to effectively notify and engage respondents with the equally indisputable reality that requiring personal service of all papers in CARE proceedings is often a major cause of delay and inefficiency in CARE proceedings. The repeated continuances and extensions caused by difficulties in effecting personal service experienced in many cases are among the reasons that "fewer respondents have received CARE agreements or plans than anticipated,"[1] and that the CARE Act is not yet producing the results anticipated by the Legislature and Governor.

Moreover, repeated personal service of legal papers does *not* "build an ongoing communicative relationship between the court, the county, and the respondent." Quite the

[1] Sen. Jud. Comm., analysis of Sen. Bill. No. 42 (2023-2024 Reg. Sess.) as amended Aug. 22, 2024.

contrary, county behavioral health professionals responsible for treating the CARE population report that constantly interjecting the intimidating formality of personal service into what is supposed to be a therapeutic process actually hinders that process and degrades trust and open communication.

Allowing the respondent to waive personal service does not fully address either of these concerns. With due respect to the Advisory Committee, there is a better, middle-ground approach that both protects the respondent's rights and grants the court flexibility to manage the proceedings to best achieve the CARE Act's goals based upon the circumstances of each case. Counties' alternative proposal is attached in red-line format, and consists of the following elements:

- Retain the personal service requirement for the "Notice of order for report to augment petition" and "Notice of initial appearance." Counties concur with the Advisory Committee that personal service is generally appropriate "before the first court appearance."

- For subsequent hearings, empower the Superior Court to determine whether personal service is necessary, effective, and feasible based on the individual circumstances of each case. Such consideration could include all of the factors noted by the Advisory Committee (e.g., the respondent's ability to receive service through other means), and also the countervailing concerns set forth above.

- Allow notices of continued hearings (i.e., when the respondent has already received an initial notification) to be provided by means other than personal service.

Thank you for your consideration of our comments. If you have any questions, please do not hesitate to contact our organizations.

Sincerely,

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Attachment:
1. Counties' Alternative Proposal for Rule 7.2235, Red-line Format

Rule 7.2235. Notice of proceedings (§§ 5977-5977.3, 5979)

(a) Notice of order for report to augment petition (§ 5977(a)(3) & (4))

(1) Before engaging the respondent and preparing a report ordered under section 5977(a)(3)(B), the county agency ordered to file the report and serve notice of that order must give written notice to the respondent by serving the respondent personally or, if personal service is not practicable, by any method reasonably calculated to give the respondent actual notice. Proof of service on the respondent by any method other than personal service must include an explanation why personal service is impracticable and why the alternative method of service used is reasonably calculated to give the respondent actual notice.

(2) The county agency must give notice to the respondent's counsel and the petitioner as provided in (d).

(3) Notice must be given on *Notice of Order for CARE Act Report* (form CARE-106) and must include a copy of *Order for CARE Act Report* (form CARE-105) issued by the court.

(4) Notice to the respondent and the respondent's counsel must also include a copy of the petition packet filed to begin the proceedings and *Information for Respondents--About the CARE Act* (form CARE-060-INFO).

(5) If the court grants the county agency additional time to engage the respondent in voluntary treatment and services before filing the report, the county agency must, within five calendar days of the order, serve written notice of the extended report deadline on the respondent, the respondent's counsel, and the petitioner on form CARE-106 as provided in (d).

(b) Notice of initial appearance (§ 5977(a)(3)(A), (a)(5)(C))

(1) The county must give at least five court days' notice of the date, time, and location of the initial appearance under section 5977(b) to the respondent and the respondent's counsel, the petitioner and the petitioner's counsel unless the county behavioral health agency is the petitioner, and, if the respondent does not reside in the county where the petition is filed, the county behavioral health agency in the respondent's county of residence and the agency's counsel.

(2) Notice must be given on *Notice of Initial Appearance--CARE Act Proceedings* (form CARE-110).

(3) Notice to respondent

(A) Notice must be served personally on the respondent or, if personal service is not practicable, by any method reasonably calculated to give the respondent actual notice. Proof of service on the respondent by any method other than personal service must include an explanation why personal service is impracticable and why the alternative method of service used is reasonably calculated to give the respondent actual notice.

(B) Notice to the respondent must include copies of the following:

(i) The petition packet filed to begin the proceedings;

(ii) Any report ordered and filed under section 5977(a)(3);

(iii) Notice of Respondent's Rights--CARE Act Proceedings (form CARE-113); and

(iv) Information for Respondents--About the CARE Act (form CARE-060-INFO).

(C) Notice of any continuance of the initial appearance may be served on the respondent by any method provided in (d).

(4) Notice to respondent's counsel

(A) Notice must be served on the respondent's counsel by any method provided in (d).

(B) Notice to the respondent's counsel must include copies of the following:

(i) The petition packet filed to begin the proceedings; and

(ii) Any report ordered under section 5977(a)(3).

(5) Notice to other persons

Notice must be served on all other persons entitled to receive notice by any method provided in (d).

(c) Notice of other hearings (§§ 5977-5977.3, 5979)

(1) The county must give at least five court days' notice of any hearing after the initial appearance to the respondent, the respondent's counsel, any local government entity the court has joined as a party to the proceedings, and, with the respondent's express consent given in writing or orally in court, the respondent's supporter.

(2) Notice must be given on *Notice of Hearing--CARE Act Proceedings* (form CARE-115) and, except as provided in (3), served as provided in (d).

(3) The court may order that the first ~~N~~notice to the respondent of any hearing ~~must~~ be served personally ~~or, if personal service is not practicable, by any method reasonably calculated to give the respondent actual notice and include a copy of *Notice of Respondent's Rights--CARE Act Proceedings* (form CARE-113)~~. If so ordered by the court, ~~P~~proof of service on the respondent by any method other than personal service must include an explanation why personal service is impracticable and why the alternative method of service used is reasonably calculated to give the respondent actual notice. Each notice served upon the respondent shall include a copy of *Notice of Respondent's Rights--CARE Act Proceedings* (form CARE-113).

(4) Notice of any continuance of a hearing may be served on the respondent by any method provided in (d).

(~~4~~5) Notice to the respondent and the respondent's counsel of a clinical evaluation hearing under section 5977.1 (c) must include a copy of the evaluation ordered under section 5977.1 (b).

(~~5~~6) Notice to the respondent and the respondent's counsel of a status review hearing under section 5977.2 (a)(1) must include a copy of the report required by that section.

(~~6~~7) Notice to the respondent and the respondent's counsel of a one-year status hearing under section 5977.3 (a)(1) must include a copy of the report required by that section.

(d) Method of service

Unless personal service is required, any notice or other document required by this rule to be served may be served as follows:

(1) Personally or by first-class mail, express mail, or overnight delivery on any person;

(2) By fax transmission as provided in rule 2.306; or

(3) Electronically as provided in Code of Civil Procedure section 1010.6 and rule 2.251.

(e) Waiver

Nothing in these rules limits the right of the respondent to waive personal service of notice or to choose to receive notice through their attorney or by other means. Any such waiver must be in writing or made orally in open court.