

**THIS BOOKLET CONTAINS THE
FILING INSTRUCTIONS AND PUBLICATION UPDATE**

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California Forms of Jury Instruction

Publication 138 Release 45A

August 2006

HIGHLIGHTS

New CACI Jury Instructions

- This release includes two new series of instructions: (1) Breach of Fiduciary Duty, and (2) Uniform Fraudulent Transfer Act.
- This release includes a new Fair Employment and Housing Act instruction.
- This release includes a new Damages instruction.

Revised CACI Jury Instruction

- This release includes numerous revised instructions.

Table of New and Revised Instructions

- Quick reference to check what has changed.

Judicial Council meeting. This covers updates that appear in the 2006 supplement to the 2006 Edition of CACI. These separate supplements for the 2006 Edition of CACI are provided to you with this release 45A at no charge.

A list of the instructions that are new or revised as of the June 30 Judicial Council meeting can be found at the end of this Publication Update.

New CACI

New Fair Employment and Housing Act (FEHA) Instruction. A new instruction has been added to the FEHA series: CACI No. 2527, “Failure to Prevent Harassment or Discrimination—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, § 12940(k)).”

New Damages Instruction. CACI No. 3964, “Jurors Not to Consider Attorney Fees and Court Costs,” has been added to the Damages series. The new instruction is intended to prevent jurors from improperly factoring attorney’s fees into their damage awards.

Release 45A, provided to you at no charge, includes Judicial Council of California Civil Jury Instructions (CACI) that are new and revised as of the June 30, 2006,

New Breach of Fiduciary Duty Series.

This release includes a new Series 4100: “Breach of Fiduciary Duty.” These instructions address issues surrounding the breach of fiduciary duties, including an explanation of “fiduciary duty” [CACI No. 4100] and essential factual elements for actions involving the failure to use reasonable care [CACI No. 4101] and the breach of the duties of undivided loyalty [CACI No. 4102] and confidentiality [CACI No. 4103].

New Uniform Fraudulent Transfer Act (UFTA) Series. This release includes a new Series 4200: “Uniform Fraudulent Transfer Act.” This series addresses issues arising under UFTA, including establishing a claim for “actual fraud” [CACI No. 4200] and “constructive fraud” [CACI No. 4202], setting forth factors to consider in determining an actual intent to defraud [CACI No. 4201], and defending an actual or constructive fraud case under UFTA based on good faith [CACI No. 4207] or the running of the statute of limitations [CACI No. 4208].

List of All New and Revised CACI (June 2006)

- CACI No. 218. Statements Made to Physician (Previously Existing Condition) (*Revised*)
- CACI No. 303. Breach of Contract—Essential Factual Elements (*Revised*)
- CACI No. 406. Apportionment of Responsibility (*Revised*)
- CACI No. 503. Psychotherapist’s Duty to Warn—Essential Factual Elements (*Revised*)
- CACI No. 2400. Breach of Employment Contract—Unspecified Term—“At-Will” Presumption (*Revised*)
- CACI No. 2521. Hostile Work Environment Harassment—Essential Factual Elements—Employee or Entity Defendant (Gov. Code, § 12940(j)) (*Revised*)
- CACI No. 2525. Harassment—“Supervisor” Defined (*Revised*)
- CACI No. 2527. Failure to Prevent Harassment or Discrimination—Essential Factual Elements—Employer or Entity Defendant (Gov. Code, § 12940(k)) (*New*)
- CACI No. 2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements (*Revised*)
- CACI No. 3103. Neglect—Essential Factual Elements (Welf. & Inst. Code, § 15610.57) (*Revised*)
- CACI No. 3202. “Repair Opportunities” Explained (*Revised*)
- CACI No. 3723. Substantial Deviation (*Revised*)
- CACI No. 3940. Punitive Damages—Individual Defendant—Trial Not Bifurcated (*Revised*)
- CACI No. 3942. Punitive Damages—Individual Defendant—Bifurcated Trial (Second Phase) (*Revised*)
- CACI No. 3943. Punitive Damages Against Employer or Principal for Conduct of a Specific Agent or Employee—Trial Not Bifurcated (*Revised*)
- CACI No. 3945. Punitive Damages—Entity Defendant—Trial Not Bifurcated (*Revised*)
- CACI No. 3947. Punitive Damages—Individual and Entity Defendants—Trial Not Bifurcated (*Revised*)
- CACI No. 3949. Punitive Damages—Individual and Corporate

Defendants (Corporate Liability Based on Acts of Named Individual)—Bifurcated Trial (Second Phase) (*Revised*)

- CACI No. 3964. Jurors Not to Consider Attorney Fees and Court Costs (*New*)
- CACI No. 4100. “Fiduciary Duty” Explained (*New*)
- CACI No. 4101. Failure to Use Reasonable Care—Essential Factual Elements (*New*)
- CACI No. 4102. Duty of Undivided Loyalty—Essential Factual Elements (*New*)
- CACI No. 4103. Duty of Confidentiality—Essential Factual Elements (*New*)
- CACI No. 4104. Duties of Escrow Holder (*New*)
- CACI No. 4105. Duties of Stockbroker—Speculative Securities (*New*)
- CACI No. 4200. Actual Intent to Defraud a Creditor (Civ. Code, § 3439.04(a)(1))—Essential Factual Elements (*New*)
- CACI No. 4201. Factors to Consider in Determining Actual Intent to Defraud (Civ. Code, § 3439.04(b)) (*New*)
- CACI No. 4202. Constructive Fraudulent Transfer (Civ. Code, § 3439.04(a)(2))—Essential Factual Elements (*New*)
- CACI No. 4203. Constructive Fraudulent Transfer (Insolvency) (Civ. Code, § 3439.05)—Essential Factual Elements (*New*)
- CACI No. 4204. “Transfer” Explained (*New*)
- CACI No. 4205. Insolvency Explained (*New*)
- CACI No. 4206. Presumption of Insolvency (*New*)
- CACI No. 4207. Affirmative Defense of Good Faith (Civ. Code, § 3439.08) (*New*)
- CACI No. 4208. Statute of Limitations Defense—Actual and Constructive Fraud (Civ. Code, § 3439.09) (*New*)

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FILING INSTRUCTIONS

CALIFORNIA FORMS OF JURY INSTRUCTION

Publication 138 Release 45A

August 2006

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VOLUME 2

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<input type="checkbox"/>	4-17 thru 4-19	4-17 thru 4-20.1
<input type="checkbox"/>	4-61 thru 4-65	4-61 thru 4-66.1
<input type="checkbox"/>	5-11	5-11

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<input type="checkbox"/>	24-1 thru 24-5	24-1 thru 24-5
<input type="checkbox"/>	25-1 thru 25-4.1	25-1 thru 25-4.1
<input type="checkbox"/>	25-31 thru 25-37	25-31 thru 25-37
<input type="checkbox"/>	25-47 thru 25-51	25-47 thru 25-52.9

VOLUME 5

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<input type="checkbox"/>	32-19 thru 32-21	32-19 thru 32-22.1
<input type="checkbox"/>	37-47 thru 37-49	37-47 thru 37-49
<input type="checkbox"/>	39-1 thru 39-5	39-1 thru 39-5
<input type="checkbox"/>	39-101 thru 39-173	39-101 thru 39-174.19
<input type="checkbox"/>	40-33 thru 40-35	40-33 thru 40-35

Tab Card

<input type="checkbox"/>	No Material removed	New Tab Card: "Ch. 41 CACI Breach of Fiduciary Duty"
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<u>Revision</u>		
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<u>Tab Card</u>		
<input type="checkbox"/>	No Material removed	New Tab Card: "Ch. 42 CACI Uniform Fraudulent Transfer Act"
<u>Revision</u>		
<input type="checkbox"/>	No Material removed	42-1 thru 42-29
<u>Tab Card</u>		
<input type="checkbox"/>	Old Tab Card (preceding Chapter 50) . . .	New Tab Card: "Ch. 50 CACI Concluding"

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