

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-15

Title	Action Requested
Civil Practice and Procedure: Revisions to <i>Request for Dismissal</i> (form CIV-110) to Address Class Actions and Waived Court Fees	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise form CIV-110	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Summary

This proposal would revise *Request for Dismissal* (form CIV-110) to include a notice that it may not be used for dismissal of a class action and make changes to the sections that apply to waivers of court fees and costs.

Discussion

Class action notice

Plaintiffs in class actions sometimes attempt to dismiss the actions by filing *Request for Dismissal* (form CIV-110), which is a Judicial Council form intended for dismissal of other civil actions but not class actions. It has been reported in some courts that attorneys file requests for dismissal of class actions on form CIV-110 and court personnel enter the dismissals without bringing the matter to the court's attention. To address this problem, the Civil and Small Claims Advisory Committee proposes revision of the form to clearly state that it may not be used for dismissal of a class action.

Dismissal of a class action, or of any party or cause of action in a class action, requires court approval. (Cal. Rules of Court, rule 3.770(a).) Requests for dismissal in a class action must be accompanied by a declaration setting forth the facts on which the party relies and stating whether consideration is being given for the dismissal. (Cal. Rules of Court, rule 3.770(a).) These requirements apply to any case designated a class action in the complaint, until the court finds

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 These proposals are circulated for comment purposes only.

the action is not maintainable as a class action or revokes a prior class certification. (Cal. Rules of Court, rule 3.760(a).)

The proposed form revision would add a box, prominently placed at the top of the form, that provides as follows:

Notice: This form may not be used for dismissal of a class action or any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

Waiver of court fees and costs

Government Code section 68637 mandates that a party filing a petition for dismissal in a case in which a fee waiver has been granted must declare, under penalty of perjury, that the court's statutory lien for the amount of waived court fees and costs has been satisfied or that any settlement, compromise, arbitration award, or other recovery has a value of less than \$10,000. (Gov. Code, § 68637(c)(4).) Form CIV-110 was revised when new fee waiver forms were developed to include a declaration to this effect on the second page of the form, along with an item on the first page (item 2) for a party to indicate that a fee waiver exists in the case. Currently, parties are supposed to check the statement in item 2 if there is a fee waiver in the case and then follow the instructions to complete the declaration on the second page of the form. Court administrators have pointed out that the form would be clearer if item 2 included two check boxes, one to indicate that a fee waiver exists in the case and one to indicate that it does not. The check box to indicate no fee waiver is a more certain indicator than simply leaving the 68637single box in current item 2 blank.

This proposal would revise item 2 to add another check box so that a party can indicate whether or not the court granted a fee waiver in the case to be dismissed. In addition, the word "costs" has been changed to "court costs" in each place it is used in relation to fee waivers.

This proposal also would revise the section on the second page of the form for the required declaration. The box on the second page with information regarding the court's lien on any proceeds over \$10,000 has been given a title and moved to above the declaration section of the form. The outline of the box also is bolder, to give it more emphasis.

The advisory committee believes that these changes, although minor, make the part of the form addressing the court's recovery of waived fees and costs clearer and thus easier to use for both the courts and the parties.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

TELEPHONE NO.: _____ FAX NO. (Optional): _____

E-MAIL ADDRESS (Optional): _____

ATTORNEY FOR (Name): _____

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: _____

PLAINTIFF/PETITIONER: _____

DEFENDANT/RESPONDENT: _____

REQUEST FOR DISMISSAL

Personal Injury, Property Damage, or Wrongful Death

Motor Vehicle Other

Family Law Eminent Domain

Other (specify) : _____

CASE NUMBER: _____

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a class action or any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
- a. (1) With prejudice (2) Without prejudice
 - b. (1) Complaint (2) Petition
 - (3) Cross-complaint filed by (name): _____ on (date): _____
 - (4) Cross-complaint filed by (name): _____ on (date): _____
 - (5) Entire action of all parties and all causes of action
 - (6) Other (specify):*

2. (Complete in all cases except family law cases.)

The court did did not waive fees and court costs for a party in this case. (This information may be obtained from the clerk. If fees were waived, the declaration on the back of this form must be completed).

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY) _____ (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent

Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY) _____ (SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent

Cross-Complainant

- (To be completed by clerk)
- 4. Dismissal entered as requested on (date): _____
 - 5. Dismissal entered on (date): _____ as to only (name): _____
 - 6. Dismissal **not entered** as requested for the following reasons (specify): _____
 - 7. a. Attorney or party without attorney notified on (date): _____
 - b. Attorney or party without attorney not notified. Filing party failed to provide a copy to be conformed means to return conformed copy

Date: _____ Clerk, by _____, Deputy

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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COURT'S RECOVERY OF WAIVED FEES AND COURT COSTS

The court has a statutory lien for waived fees and court costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

Declaration Concerning Waived Court Fees

1. The court waived fees and court costs in this action for *(name)*:
2. The person named in item 1 is *(check one below)*:
 - a. not recovering anything of value by this action.
 - b. recovering less than \$10,000 in value by this action.
 - c. recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and court costs that were waived in this action have been paid to the court *(check one)*: Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

 (TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)



 (SIGNATURE)

Item SPR11-15 Response Form

Title: Civil Practice and Procedure: Revisions to *Request for Dismissal* to Address Class Actions and Waived Court Fees (revise form CIV-110)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.