

**JUDICIAL COUNCIL OF CALIFORNIA**  
**ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Lee S. Edmon, Chair  
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DATE: April 1, 2007

SUBJECT: Collections Cases: Service and Case Management (adopt Cal. Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010, *Civil Case Cover Sheet*)  
(Action Required)

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Issue Statement

A collections case is a simple civil action seeking the recovery of money owed that generally arises from a consumer credit transaction. Currently, the various superior courts handle collections cases differently—in particular, following different case management procedures. This proposal provides for uniform rules for collections cases and is intended to increase the efficient handling of collections cases in superior court, consistent with the legal rights and obligations of the parties.

Recommendation

The Civil and Small Claims Advisory Committee<sup>1</sup> recommends that the Judicial Council, effective July 1, 2007:

1. Adopt rule 3.740 to define a collections case and exempt a case meeting the definition from the 60-day time-for-service requirements of rule 3.110(b) and active case management, unless a defendant files a responsive pleading;

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<sup>1</sup> In making its recommendations, the Civil and Small Claims Advisory Committee considered recommendations from the Collections Cases Working Group (working group). The working group was created to identify issues and recommend needed changes in procedures for handling collections cases. It is made up of Civil and Small Claims Advisory Committee members and consultants from the collections bar, a consumer organization, and the Office of the Attorney General.

2. Adopt rule 3.741 to require a court to vacate all hearing, case management conference, and trial dates if a plaintiff in a collections case files a notice of settlement;
3. Amend rules 3.110, 3.712, and 3.721 to provide exemptions from regular civil case management for collections cases meeting certain criteria; and
4. Revise form CM-010, *Civil Case Cover Sheet*, to include a check box for a rule 3.740 collections case, distinguish rule 3.740 collections cases from other collections cases, and provide related instructions.

In addition, to assist in monitoring the effects of this proposal, the Rules and Projects Committee (RUPRO) recommends that the council direct the Administrative Office of the Courts (AOC) to, within one year of the effective date of the proposal, obtain information from trial courts, in a manner determined by the AOC in consultation with the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, to evaluate the effectiveness of this proposal in achieving its objectives. RUPRO further recommends that the Civil and Small Claims Advisory Committee review this information and consider whether any changes are needed.

The text of rules 3.740, 3.741, 3.110, 3.712, 3.721, and form CM-010 are attached at pages 6–10.

#### Rationale for Recommendation

Collections cases have the following characteristics, which make them a simpler type of civil case: often no responsive pleadings are filed; if responsive pleadings are filed, often there are limited or no defenses; and the cases are resolved in a relatively short period of time with default judgments or settlements. Because of these characteristics, there is generally little or no need for active case management. In addition, it may be difficult to locate defendants and effect service of complaints within the 60-day period required under rule 3.110.

Currently, different superior courts treat collections cases differently. Some make no distinction between collections cases and general civil actions. In those courts, collections cases are subject to the same case management conferences and deadlines even though active case management may be unnecessary because the only activity in a case is effecting service and obtaining a default judgment. In other courts, collections cases are exempt from regular case management.

Many attorneys practicing in this area represent parties in a large number of cases in numerous jurisdictions. With the adoption of statewide rules applicable to collections cases, attorneys and parties would better know what to expect in their cases. In

addition, the proposed rules would allow courts and litigants to avoid unnecessary and unproductive court appearances, thereby reducing litigants' expenses and court time and resources.

To distinguish collections cases from general civil actions, rule 3.740 would define collections cases and require a plaintiff to check a box on the *Civil Case Cover Sheet* specifically for rule 3.740 collections cases. The definition of a collections case in rule 3.740 includes a monetary limit of not more than \$25,000 sought to be recovered and that the action be for recovery of money owed arising from a transaction in which property, services, or money was acquired on credit. The definition excludes certain types of actions and cases in which certain types of damages are sought.

Rule 3.740 would exempt a collections case from the 60-day time-for-service requirements of rule 3.110(b) and the case management rules that apply to all general civil cases, unless a defendant files a responsive pleading. Rules 3.110, 3.712, and 3.721 would be amended to refer to these exemptions.

Rule 3.741 would provide that when a plaintiff in a collections case files a notice of settlement, the court must vacate all hearing, case management conference, and trial dates. This is intended to eliminate unnecessary court appearances.

Form CM-010, the *Civil Case Cover Sheet*, would be revised to include a box to check for a collections case, distinguish rule 3.740 collections cases from other collections cases by providing a box for each under the larger category titled "Contract," and provide instructions stating that the identification of a case as a collections case on the form means that it will be handled as prescribed in the proposed new and amended rules.

#### Alternative Actions Considered

Instead of amending and adopting rules defining a collections case and governing service and case management in collections cases, the issues identified could be addressed through education, providing judges and court staff with alternate ways to handle collections cases. However, this would not likely result in the uniform treatment of similar collections cases.

#### Comments From Interested Parties

The proposal was circulated for public comment during the winter cycle. Seventy-eight individuals or entities submitted comments.<sup>2</sup> Commentators included judicial officers, court executive officers, court managers and supervisors, research attorneys, private attorneys and law firm staff, collections firms, and the State Bar of California

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<sup>2</sup> Identical comments from various individuals at the Law Offices of Goldsmith & Hall have been grouped together as one on the attached comment chart, reducing the number of comments on the chart.

Committee on Administration of Justice. Fifty-seven commentators agreed with the proposal and an additional nine agreed to the proposal with modifications. Twelve commentators disagreed with the proposal. A chart summarizing the comments and the proposed committee responses is attached at pages 11–62.

Those who agreed with the proposal believe that it would reduce unnecessary case management conferences, allowing courts more time to try cases and perform other required functions and saving litigants expenses; provide court staff with more time to perform other functions; and eliminate variations by court, which are difficult for lawyers practicing in different courts. Many supported the exemption from the 60-day time-for-service requirement stating that it is “problematic in collections cases with a highly mobile population, leading to unfair sanctions when all diligence is being exercised to locate defendants.” One commentator stated that currently courts’ rules, forms, and sanctions vary, making compliance more difficult for the plaintiff’s attorney and his or her client.

Commentators who agreed with the proposal if modified expressed the following concerns:

1. The possibility of a plaintiff reporting a settlement to avoid dismissal for failure to serve the complaint;
2. An increase in collections cases that are not moving toward resolution because of a lack of “enforcement”;
3. An increase in the number of cases not disposed of in one year because of the provisions in rule 3.740(e) and (f), (in which a plaintiff would have 180 days to serve a complaint and 360 days to obtain a default judgment);
4. The identification of conditionally settled cases as open and active in the court’s case management system, resulting in lack of compliance with disposition goals;
5. The inconsistency of the dismissal provisions of rule 3.740(e) and (f) with statutory and case law limitations on the type of sanctions imposed for failure to timely serve the complaint or obtain a default judgment;
6. The application of the proposal only to cases seeking not more than \$25,000; and
7. The lack of a provision that would require an order to show cause hearing before the dismissal of a case that had been reported as settled.

In addition, one commentator suggested that the definition of a collections case as “not more than \$25,000, exclusive of interest” should exclude attorney’s fees as well as interest.

The advisory committee made some changes to the proposal in response to comments. The committee modified the sanctions provisions of rule 3.740, limited the rule on dismissal of a settled case to collections cases only, and excluded attorney’s fees from the \$25,000 limit in rule 3.740(a). In addition, the *Civil Case Cover Sheet* was modified in response to comments to distinguish rule 3.740 collections cases from other types of collections cases.

The advisory committee disagreed with comments predicting that the proposal would result in cases not moving toward resolution and an increase in the number of cases not disposed of in one year. The proposal is intended to bring greater efficiency in the handling of collections cases and eliminate unnecessary court appearances. Consistent with RUPRO’s recommendation, the committee will monitor the effects of the proposal and, if needed, will consider further new and amended rules in this area. The committee believes that collections cases subject to the proposal should be limited to those seeking not more than \$25,000 because if the recovery sought is greater, the case would not be simple and may require active case management.

Concerning provisions that would have required dismissal of an action in some circumstances, Judge Talmadge R. Jones, on behalf of judges in the Superior Court of Sacramento County, commented that the provisions in rule 3.740(e) and (f) allowing an order to show cause for dismissal go further than permitted by law. Judge Jones recommended that rule 3.740(e) and (f) be modified by substituting the word “sanctions” for “dismissal.” Upon review, the advisory committee and staff agreed with Judge Jones. In response to this comment, the committee modified the rule to substitute “reasonable monetary sanctions” for “dismissal.”

#### Implementation Requirements and Costs

The proposal will require courts to make some modifications to case management systems to distinguish collection cases defined in rule 3.740 to exempt them from regular case management unless a defendant files a responsive pleading, and to provide for different timelines for the filing of a responsive pleading and orders to show cause in specified circumstances. These modifications will require staff time and training, but will not require reprogramming of case management systems.

Attachment

Rules 3.740 and 3.741 of the California Rules of Court are adopted, and rules 3.110, 3.712, and 3.721 are amended, effective July 1, 2007, to read:

1 **Rule 3.740. Collections Cases**

2  
3 **(a) Definition**

4  
5 “Collections case” means an action for recovery of money owed in a sum  
6 stated to be certain that is not more than \$25,000, exclusive of interest and  
7 attorney’s fees, arising from a transaction in which property, services, or  
8 money was acquired on credit. A collections case does not include an action  
9 seeking any of the following:

- 10  
11 (1) Tort damages;  
12  
13 (2) Punitive damages;  
14  
15 (3) Recovery of real property;  
16  
17 (4) Recovery of personal property; or  
18  
19 (5) A prejudgment writ of attachment.

20  
21 **(b) Civil Case Cover Sheet**

22  
23 If a case meets the definition in (a), a plaintiff must check the case type box  
24 on the *Civil Case Cover Sheet* (form CM–010) to indicate that the case is a  
25 collections case under rule 3.740.

26  
27 **(c) Exemption from general time-for-service requirement and case**  
28 **management rules**

29  
30 A collections case is exempt from:

- 31  
32 (1) The time-for-service requirement of rule 3.110(b); and  
33  
34 (2) The case management rules that apply to all general civil cases under  
35 rules 3.712–3.715 and 3.721–3.730, unless a defendant files a  
36 responsive pleading.

1 **(d) Time for service**  
2

3 The complaint in a collections case must be served on all named defendants,  
4 and proofs of service on those defendants must be filed, or the plaintiff must  
5 obtain an order for publication of the summons, within 180 days after the  
6 filing of the complaint.  
7

8 **(e) Effect of failure to serve within required time**  
9

10 If proofs of service on all defendants are not filed or the plaintiff has not  
11 obtained an order for publication of the summons within 180 days after the  
12 filing of the complaint, the court may issue an order to show cause why  
13 reasonable monetary sanctions should not be imposed. If proofs of service on  
14 all defendants are filed or an order for publication of the summons is filed at  
15 least 10 court days before the order to show cause hearing, the court must  
16 continue the hearing to 360 days after the filing of the complaint.  
17

18 **(f) Effect of failure to obtain default judgment within required time**  
19

20 If proofs of service of the complaint are filed or service by publication is  
21 made and defendants do not file responsive pleadings, the plaintiff must  
22 obtain a default judgment within 360 days after the filing of the complaint. If  
23 the plaintiff has not obtained a default judgment by that time, the court must  
24 issue an order to show cause why reasonable monetary sanctions should not  
25 be imposed. The order to show cause must be vacated if the plaintiff obtains  
26 a default judgment at least 10 court days before the order to show cause  
27 hearing.  
28  
29

30 **Rule 3.741. Settlement of collections case**  
31

32 If the plaintiff or other party seeking affirmative relief in a case meeting the  
33 definition of “collections case” in rule 3.740(a) files a notice of settlement under  
34 rule 3.1385, including a conditional settlement, the court must vacate all hearing,  
35 case management conference, and trial dates.  
36  
37

38 **Rule 3.110. Time for service of complaint, cross-complaint, and response**  
39

40 **(a) Application**  
41

42 This rule applies to the service of pleadings in civil cases except for collections  
43 cases under rule 3.740(a), unlawful detainer actions, proceedings under the Family

1 Code, and other proceedings for which different service requirements are  
2 prescribed by law.

3  
4 **(b)–(i) \* \* \***

5  
6  
7 **Rule 3.712. Application and exceptions**

8  
9 **(a) Application**

10  
11 The rules in this chapter apply to all general civil cases filed in the trial  
12 courts except those specified in (b), ~~and (c)~~, and (d).

13  
14 **(b)–(c) \* \* \***

15  
16 **(d) Collections cases**

17  
18 The rules in this chapter do not apply to a collections case, as defined in rule  
19 3.740(a), unless a defendant files a responsive pleading.

20  
21  
22 **Rule 3.721. Case management review**

23  
24 In every general civil case except complex cases and cases exempted under rules  
25 3.712(b)–~~(e)~~(d), 3.714(c)–(d), 3.735(b), ~~and 2.573(e)~~, and 3.740(c), the court must  
26 review the case no later than 180 days after the filing of the initial complaint.



**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36)
- Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

W07-02

Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	President of Cedar Financial Calabasas	A	Y	Best thing that happened to our judicial system in over a decade! Thank you!	The commentator's support for the proposal is noted.
2.	Amy Gordon & Wong Law Group San Bruno	A	N	No specific comment.	No response required.
3.	Mr. Barry Adler Eskanos & Adler Concord	A	Y	<p>I write to urge adoption of your proposed Rule of Court exempting collection cases from the general requirements of the fast-track process. The proposed rule would not only better implement the legislative mandate under Code of Civil Procedure section 90, et seq., for the economic litigation of limited civil actions, but would also be fully consistent with existing rule 3.735(b) exempting short cause matters "from the requirements of case management review."</p> <p>The fast-track statutes as originally implemented did not affect or infringe on the economic litigation requirements [for cases involving less than \$25,000]. Over the years, however, some superior courts have not considered fast-track's "differentiation" requirement and imposed general case management requirements on all cases regardless of the amount in issue and other relevant factors. While this may be understandable given the courts' massive case loads and the absence of an explicit statutory procedure for excepting limited jurisdiction</p>	The commentator's support for the proposal is noted.

W07-02

Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>cases from fast-track, other courts exercised their discretion under fast-track to provide alternate procedures that are consistent with fast-track and also with the economic litigation statutes.</p> <p>The proposed statewide rule would eliminate these variations and provide a uniform procedure that fully satisfies the fast-track and economic litigation statutes. In doing so, the proposed rule would also free up substantial court resources. Instead of conducting numerous unnecessary case management conferences in matters that frequently go by default (and therefore do not require case management conferences), courts would have more time to try cases and perform other judicially required functions. Moreover, court staff—frequently short-handed—would also have more time to perform other tasks and functions.</p> <p>The proposed rule would save litigants the expense of case management and other fast-track conferences. It would also save the courts time and money.</p>	

W07-02

Collections Cases: Service and Case Management

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Mr. Grant Barrett Commissioner Superior Court of California, County of Calaveras San Andreas	AM	N	Regarding rule 3.1385(b) [now 3.741], our court vacates all pending dates and sets an OSC re dismissal in lieu of an automatic dismissal under rule 225 [3.1385]. The court and parties value this hearing over an automatic dismissal.	Rule 3.741 would require a court to vacate all hearing, case management conference, and trial dates if a plaintiff files a notice of settlement. The committee believes this is appropriate to avoid unnecessary court appearances. The committee modified the proposal to create new rule, 3.741, which would apply to only collections cases.
5.	Mr. Felipe Becerra Director of Operations / Client Development CIR, Law Offices San Diego	A	Y	No specific comment.	No response required.
6.	Mr. Michael D. Belote Legislative Advocate California Creditors Bar Association Sacramento	A	Y	The members of the California Creditors Bar Association strongly and enthusiastically support this proposal.  The member lawyers of the California Creditors Bar Association handle the majority of all limited jurisdiction, consumer collections cases in California. These cases represent a tremendous volume of filings in the courts, easily several hundred thousand per year. These cases also have unique attributes: they involve a transient population of defendants who often cannot be served within the statutory 60-day deadline for service of process, and because they almost always conclude with the entry of a	The commentator's support for the proposal is noted.

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Collections Cases: Service and Case Management

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>default judgment, they do not require “case management” in the usual sense. It thus makes practical sense to create special rules for these cases, outside of the usual Delay Reduction Act standards.</p> <p>Although collections case defendants are notably more difficult to serve than, for example, personal injury defendants, the six-month standard should give the vast majority of plaintiffs reasonable time to effect service of process. Please note that because of the economics of collections cases, plaintiffs have every motivation to obtain judgment at the earliest possible time, and absolutely no motivation to delay service of process. The proposal merely reflects the reality that by the time a collections case is commenced, the debt may have passed through several hands and the defendant may have relocated one or more times.</p> <p>The proposed rule’s requirement that judgment be obtained within 12 months from filing, or an order to show cause will issue reflects the reality that approximately 98% of all cases covered by the proposal are concluded with defaults. Rarely is an answer or other responsive pleading filed. These cases simply do not merit or require the status conferences and settlement conferences inherent in general civil cases. On</p>	

Collections Cases: Service and Case Management

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>the other hand, diligent lawyers should bring these cases to conclusion within the 12- month time frame, or explain to the court why the actions should not be dismissed.</p> <p>Eliminating unnecessary appearances is a manifest benefit to the entire judicial system. Not only is judge and clerk time reserved for cases actually requiring case management, but lawyers are freed from the time-consuming and thus expensive obligation to appear at conferences where there really is nothing to discuss. The rules in this proposal are thus simple, economical, and effective, benefiting courts, lawyers, and litigants equally.</p>	
7.	<p>Mr. Saul Bercovitch Staff Attorney The State Bar of California San Francisco</p>	AM	Y	<p>The State Bar of California's Committee on Administration of Justice (CAJ) supports the proposal, subject to the following amendments.</p> <p>First, CAJ believes the proposed definition of "collections case" should delete the phrase "that is not more than \$25,000, exclusive of interest." Although some local rules currently provide for different treatment of limited jurisdiction collections cases, CAJ does not believe that \$25,000 should be a dividing line that carries over into the new statewide definition. The common characteristics of collections cases often apply equally to cases that are below and above the \$25,000 limitation,</p>	<p>The committee believes that collections cases seeking more than \$25,000 benefit from active case management and therefore excluded them from the definition of a collections case in rule 3.740.</p>

Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>and the stated basis for this proposal would apply equally to cases that otherwise meet the proposed definition of “collections case,” even where the sum stated to be certain exceeds \$25,000.</p> <p>Second, CAJ believes there should be some explicit statement in the new rule indicating that 180 days for service is intended to be an <i>outside limit</i>. Based on the experience of CAJ members with collections cases under the current rules, it is a common occurrence for the plaintiff to seek, and the court to grant, 45- and 60-day extensions, two and three times, to allow the plaintiff more time to attempt to serve the defendant. If the rule simply allows 180 days for service, the plaintiff will, most likely, be in court on the 180th day seeking an extension of time for service.</p> <p>To avoid this possibility, CAJ suggests that language be added to the proposed new rule, providing for some extraordinary showing before the 180-day period will be extended. One possibility is to add language similar to the language in current Rule 3.714(c)(1), which provides that the court may “in the interest of justice” exempt a general civil case from the case disposition time goals if the court “finds the case involves exceptional circumstances” that will prevent the court and the parties from</p>	<p>The committee believes that the time-for-service requirement of rule 3.740(d), specifying that the complaint must be served and proofs of service filed within 180 days after filing the complaint, is sufficiently clear and does not invite requests for extensions of time.</p>

## Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				meeting the goals and deadlines that are imposed.	
8.	David M. Blicher ADR Administrator, Judge Pro Tem Superior Court of California, County of Yolo	A	Y	We strongly support the changes proposed. We were in the process of developing our own differentiation plan for limited collection cases when this came to light. These cases, if kept to a clean and strict program of case management compliance will end up costing a great deal less court time. A uniform statewide procedure will also benefit the practitioners. We like it.	The commentator's support for the proposal is noted.
9.	Mr. Mark Borrell Court Commissioner Superior Court of California, County of Ventura	AM	Y	<p>The proposals would establish case management guidelines, which are unique to collections cases. The effect of these rules would be to have later and less court supervision of collections matters. Whereas under the current system we employ, a collections case would be set for a review if no proof of service of the summons were filed within the first 3 1/2 months, the proposed rule implies that an order to show cause regarding the filing of the proof of service should not occur until after 180 days have passed from the filing of the complaint.</p> <p>After the 180 days, the court "may" issue an order to show cause. If the proof of service or order for publication is filed more than 10 court days before the hearing on the order to show</p>	The order to show cause is vacated if the reason for it is eliminated, i.e., plaintiff obtains a default judgment.

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(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>cause, the order to show cause is “continued” to the 360-day mark. That order to show cause may go off calendar if a default judgment is obtained at least 10 court days before the hearing.</p> <p>From our perspective, there are two fundamental problems with the proposed changes. One is a “nuts-and-bolts” objection, and the other is more conceptual.</p> <p>First, the “nuts-and-bolts” concern. There is a problem with saying that the proof of service “must be filed...within 180 days” but implying that it actually can be filed later, up to 10 court days before the order to show cause (which isn’t set until after the 180th day). The effect is to give the word “must” the meaning “should.” Too often lawyers attempt to blur the distinction between these two words; clarity and prudence mitigate against creating that kind of ambiguity where it may be avoided.</p> <p>The second concern is more of a conceptual issue with the proposed scheme. Our court has made a commitment to resolving collections cases with a one-year time frame. The proposed rule leaves open the possibility that the answer in a collections case may not be filed until shortly before the 360th day following the filing of the complaint. Such a case could not be</p>	<p>Under rule 3.740, the complaint must be served within 180 days, but action in the form of sanctions is not taken until an order to show cause hearing, which must be continued to 360 days after the filing of the complaint if plaintiff files a proof of service of the complaint.</p>

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				<p>resolved within a year, and would likely be on an 18-month track.</p> <p>In order to meet our desire to adhere to a one-year timeline, our court has been more proactive in managing collections case, and involved earlier on, than the proposed rules contemplate. In addition, the culture of this court has been to set order to show cause hearings <u>prior</u> to the last date for compliance and then to continue the matter for a second hearing after the compliance date. The effect is that the matter is heard at least twice before the action is involuntarily dismissed for noncompliance.</p> <p>The proposed rules seem to contemplate the order to show cause hearings will be held only after the compliance date has passed and the issue is simply whether to dismiss the action. The approach of the proposed rules may be more efficient and expedient, but the practice of this court offers greater flexibility and, with it, a greater opportunity to the litigants for resolution on the merits.</p> <p>The proposed rules would allow a hiatus in collections cases between the filing of the proof of service (which the rules suggest should occur no later than shortly after the 180th day) and the filing of an answer or request for default judgment (which should occur by the 360th</p>	

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				<p>day). Since the defendant’s responsive pleading will be due within 30 days of service (or 40 days for substitute service or 58 days for publication) it is not clear why nearly six months is required for this phase of the case. Rarely is there a compelling reason for a lengthy delay in a request for entry of default judgment after the summons has been served.</p> <p>To address these concerns, we would endorse a set of rules, which tracked along these lines:</p> <ol style="list-style-type: none"> <li>1. An initial status conference concerning the filing of the proof of service (or order for publication) should be set at the five month mark, with no appearance necessary if the required document is filed at least 10 court days prior to the conference.</li> <li>2. Where that status conference is conducted, and there is not compliance by the time of the conference, the matter should be set for an order to show cause regarding dismissal to be heard after the 180th day, with no appearance necessary if the required document is filed at least 10 court days prior to the conference.</li> <li>3. Where the hearing on the order to show cause is conducted, and there is not compliance by the time of the hearing, the action should be dismissed, or, upon a showing of good cause</li> </ol>	<ol style="list-style-type: none"> <li>1. The committee disagrees, believing that this is unnecessary and would create additional work for court staff.</li> <li>2. The committee believes it is preferable for the order to show cause hearing to be set when lack of compliance is established.</li> <li>3. The committee declines to modify the proposal as suggested by the commentator. Rule 3.740(e) allows a court to issue an order to show cause why reasonable</li> </ol>

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				<p>and due diligence, the time for compliance should be extended for no more than 30 days and the order to show cause should be continued to a date at least 10 court days beyond the end of the extended compliance period. No appearance would be required at the continued order to show cause if the required documents were filed at least 10 court days before the order to show cause.</p> <p>4. Once the proof of service or publication order is filed, the matter should be set for a status conference to be held within 60 days after the proof of service or publication order is filed, with no appearance necessary if the required pleading is filed at least 10 court days before the conference.</p> <p>5. Where this status conference is conducted, and there is not compliance by the time of the hearing, the action should be dismissed, or, upon a showing of good cause and due diligence, the time for compliance should be extended for no more than 30 days and the order to show cause should be continued to a date at least 10 court days beyond the end of the extended compliance period. No appearance would be required at the continued order to show cause if the required document is filed at least 10 court days before the order to show</p>	<p>monetary sanctions should not be imposed for failure to serve the summons and complaint within 180 days. If the plaintiff complies, the committee believes it appropriate to allow additional time (up to 360 days from the date the complaint was filed) to obtain a default judgment.</p> <p>4. The committee disagrees because the intent of the proposal is to reduce unnecessary court appearances and calendaring in collections cases seeking \$25,000 or less and otherwise meeting the criteria in rule 3.740.</p> <p>5. The committee declines to modify the proposal to provide for a status conference in these circumstances. Under rule 3.740(f), if the defendant does not file a responsive pleading, the plaintiff must obtain a default judgment within 360 days of the filing of the complaint or be subject to an order to show cause.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				cause.	
10.	Mr. Thomas Brayton Attorney at Law Long Beach	N	N	<p>I am an attorney who engages in civil litigation, including collection matters. It is my experience that often the defendants in so-called simple collection matters are unsophisticated nonrepresented parties who are bewildered by the civil litigation system. These individuals will often appear at the order to show cause regarding service or the case management conference with summons and complaint in hand wondering how and why he or she is in this mess and unconvinced they are the proper defendant.</p> <p>Sometimes they are not served or service did not occur as stated on the proof of service. However, when these defendants appear at the case management conference, or an order to show cause regarding service, they encounter an attorney who is usually advised by the judge to consult with the defendant and “see what can be done.” At this point the attorney is often duty-bound to inform the collection agency that there may be a problem. The attorney, as a courtesy to the court and the defendant, is usually going to advise this defendant on, at the very least, the location of the law library, legal aid or local bar associations who can provide inexpensive advice or attorney referrals. This has been my experience.</p>	The committee believes that the proposal is fair to both sides and will eliminate unnecessary court appearances.

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				<p>Should the new changes go into effect, these most unsophisticated defendants will simply find themselves one day with a mysterious judgment against them, while they never fully understood what was going on in the legal labyrinth and they may not be able to set that judgment aside, even though the judgment might have been based on a summons and complaint that was never served on them.</p> <p>The proposed changes seem to be efficient for the collection firms, but in reality these changes will be a license for collection agencies to engage in sloppy and suspect procedures leaving too many people out in the cold wondering what happened when they try to buy a house or finance a car only to be told they cannot qualify for a loan due to a legal judgment they never knew about. I strongly recommend that these changes not be made. The damage that will be done to many defendants will be substantial and, perhaps, irreversible. Courts exist to ensure that parties get a fair shake. Courts are not simple depositories of papers for judgments against unsuspecting citizens.</p>	<p>The proposal does not change any service requirements, except to provide for more than 30 days to effect service of the summons and complaint.</p>
11.	Hon. Neal Cabrinha Judge Superior Court of California, County of Santa Clara	AM	N	I am entering my fifth year as a case manager (including three years handling all of our limited jurisdiction cases). I have served two years as supervising judge of our civil division.	

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				<p>I have three comments regarding the proposed change to rule 3.1385.</p> <p>1. I am concerned that plaintiffs would use this provision to report as settled a case which was not truly settled, but had not been served and was approaching order to show cause/dismissal under proposed rule 3.740(e). According to proposed 3.1385(b) [now 3.741], the order to show cause/dismissal would have to be taken off calendar. If others share this concern, there may be two possible workarounds: (a) require proofs of service before notice of settlement; or (b) require plaintiffs to submit a copy of the written settlement agreement (they are always written in these cases) signed by the parties themselves as required by <i>Levy v. Superior Court</i> (1995) 10 Cal.4th 578, 586 (although this may trigger an appearance fee for defendants who have not formally appeared in this case;</p> <p>2. The notice of settlement should report that the case is settled in its entirety. It is not sufficient that plaintiff settled with some but not all, as the case will require management as to nonsettling defendants as to whom plaintiff has not obtained judgment; and</p> <p>3. As written, it appears that a case reported as settled would go off calendar. For the court to manage the case to conclusion, the rule should</p>	<p>1. The committee does not believe this will result in the filing of improper and inaccurate notices of settlement. However, the committee modified the proposal to create new rule, 3.741, which would apply to only collections cases. Under rules 3.741 and 3.1385(c) and (d), if the plaintiff does not file a request for dismissal within 45 days of the date of settlement, the case will be dismissed.</p> <p>2. Under rule 3.1385, the filing of a notice of settlement means that the entire case is settled.</p> <p>3. Under rules 3.741 and 3.1385(c) and (d), if the plaintiff does not file a request for dismissal within 45</p>

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				require the court to set a dismissal review hearing in accordance with (relettered) subsections (c) and (d) of the rule.	days of the date of settlement, the case will be dismissed.
12.	Hon. Raymond Cadei Judge Superior Court of California, County of Sacramento	A	N	No specific comment.	No response required.
13.	Ms. Krystina Cifuentez Deputy Court Administrator III Superior Court of California, County of King	A	Y	Agree with proposed changes.	No response required.
14.	Mr. Rory Clark Attorney Westlake Village	A	N	As a California attorney for more than 28 years handling consumer debt collection matters for 25 of those years, the benefits of: a) eliminating relatively unnecessary case management conferences in typical collection cases which overwhelmingly proceed by default; b) eliminating the 60-day rule for service of process where the defendant population in	The commentator's support for the proposal is noted.

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				collection matters is highly transient; and c) standardizing the court procedures for collection actions throughout the state are enormous.	
15.	Mr. George L. Cohn Attorney Redondo Beach	A	N	This will save countless hours for the court, parties, and counsel, while substantially streamlining court calendars across the state of California.	The commentator's support for the proposal is noted.
16.	Mr. Jordan Cook Attorney Resurgence Financial LLC Costa Mesa	A	N	No specific comment.	No response required.
17.	Ms. Pamela Cox General Counsel Persolve, LLC Valencia	A	N	No specific comment.	No response required.
18.	Mr. Irwin Eskanos President Eskanos & Adler, PC Concord	A	Y	No specific comment.	No response required.
19.	Mr. Andrew Estin Vice President, American Legal Support Services, Inc. North Hollywood	A	N	This is an excellent change. It will be better for the judges, clerks, attorneys, and process servers and will not harm defendants.	The commentator's support for the proposal is noted.

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20.	Ms. Thushari Fernando Legal Assistant The Guerrini Law Firm Pasadena	A	Y	No specific comment.	No response required.
21.	Mr. Scott Gitlen Attorney at Law Law Offices of Goldsmith & Hall Encino	A	N	No specific comment.	No response required.
22.	Mr. Jeremy Golden Attorney Law Offices of Eric F. Fagan Chula Vista	N	N	Debt collectors should not get an advantage not afforded to other litigants, especially to the detriment of consumers. Normal time to serve a complaint is fair: more time means greater uncertainty for consumers and makes it more likely evidence gets lost or destroyed.	The addition of 120 days for service is intended to allow time to locate difficult-to-find defendants.

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23.	Mr. William Goldsmith Law Offices of Goldsmith & Hall Encino	A	N	<p>The purpose of the fast track rules is good, as applied to typical civil litigation matters. However, with simple collection matters, 95 percent go by default judgment. It is a waste of the courts' limited resources and time, attorneys' and parties' time, to have status conferences, hearings, and case management conferences all on matters which are going by default judgment.</p> <p>This proposal streamlines the system, making it more efficient on the courts and the parties where a default judgment is going to be entered.</p> <p>The safeguard here, is that if a defendant files an answer, the case goes on the normal fast track, where it should be.</p> <p>This proposal had the unanimous backing of both the bar, bench, and leading consumers' groups.</p>	The commentator's support for the proposal is noted.
24.	Law Offices of Goldsmith & Hall Encino (Comments submitted by varioius individuals at this law firm are grouped here in a single entry as the comments are identical.) Ms. Blanca Alvarado Ms. Ivy Amagna			<p>Statewide rules eliminate the problem of county-by-county variations which are difficult for lawyers practicing in a variety of jurisdictions.</p> <p>The current 60-day requirement to effect service of process is problematic in collections cases with a highly mobile population, leading to</p>	The commentators' support for the proposal is noted.

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	Ms. Kathleen Cella Mr. Hector Galvan Ms. Maria Gonzalez Ms. Donna Griffith Mr. Jack Hull Ms. Miriam Rodriguez Ms. Ruby Salazar Ms. Karen Salgado Ms. Tania Sanchez			unfair sanctions when all diligence is being exercised to locate defendants.  The proposal will eliminate meaningless status conferences for collections cases which normally go by default, saving resources for courts, lawyers, and litigants.  Any defendant who requests can opt back into the regular case management process, so no one will be deprived of any rights.	If a defendant files a responsive pleading, the case is subject to regular case management. (Rule 3.740(c)(2).)
25.	Ms. Alexis Gomond Administrative Assistant The Guierriini Law Firm Pasadena	A	Y	No specific comment.	No response required.
26.	Mr. Evan Gordon Senior Legal Analyst The Guerrini Law Firm Pasadena	A	N	No specific comment.	No response required.
27.	Mr. Stephen Greenberg Attorney Bakersfield	AM	N	This will either work smoothly and as intended for the valid reasons thought out. Or as is the case with some collection outfits, six months later because of no enforcement control, there will be thousands of these cases back in the pipeline all in derogation of the Delay Reduction Act goals.  One idea may be to provide a sanction for any	The committee will monitor the effects of this proposal and, if needed, will consider further new and amended rules in this area.

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				<p>law firm filing such cases that wind up after the 180 days without a proof of service on file and it is, say, the third such instance within an 180-day period. In which case, the similar non-supervised case of said law firm would then <i>all</i> be back on monitoring status for a period of months.</p> <p><i>Questions:</i> If this rule becomes effective 7/1/07, what about the order to show re: proof of service's and case management conferences already set by computer generation or otherwise? Will they be vacated? Or, will they be kept on calendar while all others are not so calendared?</p>	<p>The rules will apply to cases filed on and after the effective date. The identification of cases under rule 3.740 is triggered by the filing of the <i>Civil Case Cover Sheet</i>.</p>

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28.	Mr. E. Warren Gubler Gubler & Koch Visalia	A	Y	I am writing in support of the proposed changes in statewide rules of court relating to collection cases. I have been practicing for approximately 23 years in the area of collections and believe that these changes will be very helpful. It is difficult when practicing in the various counties to try to keep up with different local rules, which often contradict those in other counties. In routine collection cases, the current 60-day requirement to affect service of process unnecessarily complicates matters, especially when best efforts are being made to track down defendants to serve them promptly. These types of limited jurisdiction collection cases do not require the local courts to closely monitor them, and currently are a waste of local court resources. I believe that by enacting these proposals, and creating a uniform manner for addressing collection cases statewide, there will be an increase in efficiency which will help all of those involved. Likewise, these proposed rule changes will save clients money by eliminating many of the repetitious and unnecessary case management conferences, orders to show cause hearings, etc.	The commentator's support for the proposal is noted.
29.	Mr. John Guernni Owner The Guernni Law Firm Pasadena	A	Y	The changes will greatly eliminate the unnecessary and wasteful practices in short cause collection cases.	The commentator's support for the proposal is noted.

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30.	Hon. Douglas Haigh Commissioner Superior Court of California, County of Los Angeles	AM	N	<p>The 360-day period in 3.740(e) and (f) should be changed to 330 days. If our goal is to dispose of cases within one year, this allows an set order to show cause to be set and heard within that time period. Otherwise, the set order to show cause will not be heard until after one year has passed.</p> <p>The order to show cause regarding proof of service (rule 3.740(e)) should permit an order of monetary sanctions as an alternative to dismissal.</p> <p>While the proposal states that cases where an answer is filed are subject to the regular case management rules (rule 3.712(d)), it is unclear exactly what happens when an answer is filed. Is the case sent to a judicial officer? Set for trial? Set for case management conference/review? Before whom? My own preference would be for a judicial case management review. The vast majority might be very simple, but early judicial oversight would allow us to address the problem case before a trial date.</p> <p>4. Rule 3.1385(b) says all future dates and hearings are vacated when there's a conditional settlement. In the computer system used in my</p>	<p>After lengthy and thoughtful discussions, the committee proposed a 360-day period for a plaintiff to accomplish service and obtain a default judgment and the committee declines to modify this rule.</p> <p>The rule has been modified to permit an order of reasonable monetary sanctions instead of dismissal.</p> <p>When a defendant files a responsive pleading, making the case subject to regular case management rules, a case management conference should be set by the court and conducted in accordance with rule 3.722. The committee believes that the timing of the conference in relation to the filing of defendant's responsive pleading should be left to local practice or local rules, consistent with applicable California Rules of Court.</p> <p>The committee believes that most cases subject to this proposal will be disposed within one year. For</p>

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				<p>court, such cases show up as open, active cases. For statistical purposes this has to be addressed, because if it isn't, we will fall far out of compliance with disposition goals. A statistical category of "suspended" or something in that vein would work. An alternative would be to amend the judicial council form to reflect that a notice of conditional settlement operates as a request to dismiss and retain jurisdiction per Code of Civil Procedure, section 664.6, in which case the cases show up as dismissed.</p> <p>While I don't have any major objection to this whole idea, my preference would be for a single order to show cause re proof of service/case management review to be set automatically before a bench officer at 150 or 180 days, which can then be continued to 330 or 360.</p>	cases that are conditionally settled, each court may use the category of "suspended" or "inactive." Finally, standard 2.2 of the Standards of Judicial Administration provides that conditionally settled cases should be excluded from the case disposition time goals.
31.	Mr. Richard Hernandez Skiptracer Goldsmith & Hull Pacoima	A	N	No specific comment.	No response required.
32.	Hon. C. Andeas Holmer Presiding Judge Superior Court of California, County of Nevada	N	Y	Effective January 1, 2006, this court enacted a new local rule (rule 4.00.9(a)) dealing with limited short cause collection cases. This rule essentially exempts short cause limited collection cases from the case management process and sets the cases for trial when a case is filed. It provides:	

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				<p>“When a limited case is filed, it will be determined whether it is a short cause collection case that should be exempt from the requirements of case management review. (Rule 214(b) [renumbered 3.735(b)].) If that determination is made, trial will be set approximately 180 days from the date of filing of the complaint. The order and notice of trial will be issued when the complaint is filed and the summons issued and plaintiff shall serve the order and notice of trial with the complaint. If the case is not ready to go to trial due to lack of service, it shall be dismissed absent a showing of good cause made on the date of trial.”</p> <p>The necessity for this rule was the burden placed on the court in limited collection cases by collection attorneys including: failure of the collection attorneys to utilize our tentative ruling procedure for proposed case management conference orders; multiple case management orders because of non-compliance with the rules; if order to show causes were issued for non-compliance and an appearance required, collection firms would either ignore the order of an appearance or send a “substitute” attorney who had not reviewed the file, had no idea what had happened in the case, and had no authority to bind the collection firm and/or client. Dismissal was not a legally viable alternative to</p>	

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				<p>continued violations.</p> <p>It seemed that the collection firms were using our court to monitor their cases, e.g., there were numerous cases where there was no attempt to serve a defendant until multiple case management conference orders from the court; if a defendant was finally served, then there were frequent delays in requesting entry of default; if a default was entered, then there were multiple delays in entering judgment; and, when a default judgment was sought, the simplest legal procedures for obtaining judgment were misunderstood or ignored.</p> <p>It has been a year since local rule 4.00.9(a) was enacted so we have a good track record of its effectiveness. At first, the collection attorneys ignored the fact that a trial had been set and sought relief at or near the time of trial. Now, however, most of the cases set for trial are resolved prior to trial without any involvement with case management conference clerk staff or the case management conference judge. And, if a trial is necessary, it is completed in an early and expeditious manner. Almost all of our limited collection cases are tried within six to seven months.</p> <p>Our new rule has greatly reduced staff and judicial time in dealing with these cases. And,</p>	

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				<p>the collection agencies and attorneys are relieved from multiple appearances to comply with case management conference orders. The courts should not have to act as “ticklers” or “policemen” for law firms who do not follow the rules. Our rule has practically eliminated this practice.</p> <p>Specific Comments on Proposal</p> <p>1. By its terms, the proposed rule applies only to limited collection cases and not unlimited collection cases. We believe there should be a uniform statewide rule exempting limited collection cases from the case management conference process and allowing the courts to fashion their own rules, but allowing for dismissal for non-compliance with the rule. We believe unlimited cases should comply with the same rules as other civil cases.</p> <p>2. If a statewide rule is adopted to cover limited collection cases, it should be similar to the one enacted in our court so that limited collection cases can be set for trial when a complaint is filed. That would allow leeway for the collection firms to serve beyond the current 60-day rule. As long as the case is ready to go to trial, it doesn't matter if the defendant is served late.</p> <p>3. It is difficult to understand why limited</p>	<p>1. The committee agrees that the rules should exempt limited jurisdiction collections cases from case management if a defendant does not file a responsive pleading and that unlimited cases should be treated as other general civil cases.</p> <p>2. The committee declines to modify the rule to require the setting of a trial date.</p> <p>3. The committee believes that</p>

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				<p>collection cases should be treated any differently than any other case. The time for service in limited collection cases should not be 180 days when the time for service in a medical malpractice case, a product’s liability case, or a complex real property case with multiple defendants is 60 days.</p> <p>The reality is this: if we give collections cases 180 days to serve, then the courts are mandated to set the next order to show cause nearing for 180 more days. That means cases won’t be set for trial until a minimum of a year. What if they haven’t served the defendant or entered a default within a year? Does that mean the court is mandated to set these cases more than one year out and up to two years out?</p> <p>The reality is that cases settle when they get close to trial. If we allow collection cases a year to get a trial date, there is no incentive to settle prior to that time. We are awarding those litigants and attorneys who do not prosecute their cases with due diligence. If a rule is passed along the lines proposed, then the service requirements should be 90 days and the second phase should be 90 days, for a total of 180 days. There is absolutely no justification shown (nor can this court think of any justification) for allowing the 360 days proposed.</p>	<p>longer time for service is warranted in collections cases because of the greater difficulty of locating defendants.</p>

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(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				4. Most collection cases are limited cases, so applying the same rules to limited collection cases as are applied to other civil cases will have little impact on reducing staff and court time. However, affording the limited collection cases preferential treatment will result in greater expenditure of staff and judicial time. For our court, that will involve additional tracking by staff and it will greatly limit judicial discretion in moving these cases along.	4. The committee believes that limited jurisdiction collections cases in which the defendant does not appear require less case management than other civil cases and expects this proposal to reduce the court resources needed for these cases.
33.	Mr. Simon Housman Attorney Simon A. Housman Attorney at Law Rancho Mirage	A		No specific comment.	No response required.
34.	Mr. Kurtiss A. Jacobs Attorney Eskanos & Adler Concord	A	N	As stated on the Invitation to Comment itself (p. 2, paragraph 1), “Because of these characteristics, there is generally little or no need for active case management.” Yet under current rules, many courts do waste their own and counsel’s time on case management conferences. The proposal should be adopted.	The commentator’s support for the proposal is noted.
35.	Ms. Alaine Jelsvik Assoc. General Counsel Persovle, LLC Valencia	A	N	No specific comment.	No response required.

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(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
36.	Mr. Dennis Jones Executive Officer Superior Court of California, County of Sacramento	AM	Y	Our judicial officers have concerns over possible conflict with existing case law; a letter will be sent under separate cover regarding this proposal.	The committee agrees with the comments and recommendation and has modified the rule accordingly.
37.	Hon. Talmadge R. Jones Judge Superior Court of California, County of Sacramento	AM	Y	<p>While we approve of the concept of establishing procedures that treat collection cases differently from other general civil cases, we have a concern with the proposal in new rule 3.740 as an initial sanction.</p> <p>It seems that the intent of proposed rule 3.740 is to provide a substitute for the sanctions presently available in rule 3.110. However, the sanctions provision in proposed rule 3.740 is much more drastic than those set forth in rule 3.110. Under rule 3.110 the failure to timely serve or to enter default may result in the issuance of an OSC for sanctions. Rule 3.740(e), applicable only to collections cases, skips lesser sanctions and goes straight to the drastic sanction of dismissal. It provides that the court may issue an OSC re dismissal if proofs of service (or request for order for publication) are not filed within 180 days. If proofs of service are filed at least 10 days before the OSC hearing, the court must continue the hearing for 360 days. Rule 3.740(f) provides that the court must issue an OSC re dismissal if plaintiff has not obtained a default judgment within 360 days. The OSC must be vacated if</p>	The committee agrees with the comments and recommendation and has modified the rule accordingly.

Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

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				<p>plaintiff obtains a default judgment at least 10 court days before the OSC hearing.</p> <p>We are concerned that the issuance of an OSC for dismissal in these circumstances is contrary to the Trial Court Delay Reduction Act. That act delegates rule-making authority to the Judicial Council. (Gov. Code, § 68603) and provides for imposition of sanctions authorized by law (§ 68608(b)). Dismissal is authorized only if less severe sanctions would not be as effective. In <i>Garcia v. McCutchen</i> (1997) 16 Cal.4th 469, the court held that a court may <i>not</i> dismiss the action for noncompliance with speedy trial rules if noncompliance is the responsibility of counsel, not of the litigant, since this would go beyond sanctions authorized by law.</p> <p>Likewise, in <i>Tliche v. Van Quathem</i> (1998) 66 Cal. App. 4th 1054, the court considered the question of whether the 2-to-5 year time limitations for discretionary and mandatory dismissal, specified in the Code of Civil Procedure chapter 1.5 (§ 583.110 et seq.), proscribe the trial court's authority to dismiss an action for delay in prosecution under local delay reduction rules. The court held that Code of Civil Procedure section 583.150 provides the authority for a trial court to dismiss a case under its fast track rules, and that there is no</p>	

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				<p>prohibition against a local court, by local rule, providing for dismissal of an action if the summons and complaint have not been served within 60 days provided: (1) the failure to serve is the fault of the client and not the attorney and (2) less severe sanctions have not been effective.</p> <p>However, in <i>Tliche</i> (supra), the appellate court reversed the trial court’s order of dismissal. The court pointed out that service of the complaint when a party is represented by counsel is usually an act peculiarly within the control of counsel, and not the party. There was no evidence in the record that the client was in any way responsible for the delay in service of the complaint on the defendants.</p> <p>The reasoning of these two appellate decisions arguably apply to the dismissal sanction in proposed rule 3.740. If the Judicial Council agrees that it does, we recommend that proposed rule 3.740 subsections (e) and (f) be amended by substituting the word “sanctions” for “dismissal.” Also that the word “must” in rule 3.740 be replaced by “may.”</p>	<p>The rule has been modified to provide for reasonable monetary sanctions instead of dismissal.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
38.	Ms. Lauren Landers Legal Assistant Lang, Richert & Patch Fresno	A	N	As a legal assistant dealing with collection matters, it is very difficult to locate and serve a debtor in a period of just 60 days. I am pleased to find out that the courts will provide us with a 6-month period (180 days) to locate and serve a debtor.	The commentator's support for the proposal is noted.
39.	Mr. Ryan Lauzon Brachfeld & Associates Torrance	A	Y	<p>I am writing to express my extreme support for the proposed Judicial Council rule changes in regards to collections cases.</p> <p>Statewide rules eliminate the problem of county-by-county variations which are difficult for lawyers practicing in a variety of jurisdictions.</p> <p>The current 60-day requirement to effect service of process is problematic in collections cases with a highly mobile population, leading to unfair sanctions when all diligence is being exercised to locate defendants.</p> <p>The proposal will eliminate meaningless status conferences for collections cases which normally go by default, saving resources for courts, lawyers, and litigants.</p> <p>Any defendant who requests can opt back into the regular case management process, so no one will be deprived of any rights.</p>	<p>The commentator's support for the proposal is noted.</p> <p>If a defendant files a responsive pleading, the case is subject to regular case management. (Rule 3.740(c)(2).)</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
40.	Mr. Robert Lee 2940 Pyrenees Dr. Alhambra	A	N	<p>I agree with the proposed changes for the following reasons:</p> <p>Statewide rules eliminate the problem of county-by-county variations which are difficult for lawyers practicing in a variety of jurisdictions.</p> <p>The current 60 day requirement to effect service of process is problematic in collections cases with a highly mobile population, leading to unfair sanctions when all diligence is exercised to locate defendants.</p> <p>The proposal will eliminate meaningless status conferences for collections cases which normally go by default, saving resources for courts, lawyers, and litigants.</p> <p>Any defendant who requests can opt back into the regular case management process, so no one will be deprived of any rights.</p> <p>Ultimately, the proposed rule changes will save the court time and money and will be beneficial for both the court and attorneys.</p>	<p>The commentator's support for the proposal is noted.</p> <p>If a defendant files a responsive pleading, the case is subject to regular case management. (Rule 3.740(c)(2).)</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
41.	Ms. Jennifer Leiker Paralegal Lang Richert & Patch Fresno	A	Y	Adopting this change would be beneficial to all who work in collections. The proposal offers clear-cut timelines to effect service of process that can be implemented statewide. The proposal will eliminate unnecessary case management conferences, which would save time and money for all parties involved. The defendant will still have the right to request a case management conference, showing this proposal will be fair for both sides.	The commentator's support for the proposal is noted.
42.	Ms. Connie Martin Attorney Silverman Law Firm Ventura	A	N	Agree with proposed changes.	No response required.
43.	Ms. Dana Matthews Legal Research Attorney Superior Court of California, County of Tuolumne	N	Y	This court disagrees with the proposed rule change for rule 3.1385(b). Vacating all hearing, case management, and trial dates after the filing of a notice of settlement, including a conditional settlement, prohibits the court from continuing active management of its caseload through to disposition.  Past practice indicates the court cannot rely on counsel to timely file a notice of dismissal, which dismissal is required for a case to be disposed. The court is responsible for the pace of litigation before it, pursuant to standard 2.1(b), and that would include ensuring the case reaches disposition. This court uses case	In response to this comment, the committee modified the proposal to create new rule, 3.741, which would apply to settlements in collections cases and not all civil cases.  For cases that are conditionally settled, each court may use the category of "suspended" or "inactive."

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				<p>management conferences to make sure a dismissal is timely filed, and would like to be able to continue to do so. The filing of the dismissal disposes of the case; a notice of settlement does not.</p> <p>The adoption of this rule effectively prevents a court from managing civil filings towards the end of securing dispositions. If the rule is adopted, serious consideration should be given to modifying the JBSIS reporting regulations to count reporting of conditional settlements as dispositions for application to the RAS calculation.</p>	Standard 2.2 of the Standards of Judicial Administration provides that conditionally settled cases should be excluded from the case disposition time goals. Modifying the JBSIS reporting regulations is beyond the scope of this proposal.
44.	Hon. J. McLafferty Presiding Judge Superior Court of California, County of Santa Barbara	A	N	No specific comment.	No response required.
45.	Ms. Debra Meyers Chief of Staff Counsel Superior Court of California, County of San Bernardino	N	Y	<p>This rule exempts collection cases from case management fast track rules. The stated objectives are to resolve the many conflicting local rules so that parties and attorneys in collection cases will better know what to expect, and to avoid unnecessary appearances and expenses.</p> <p>While it's true that collection attorneys handle many cases at once, it is not clear from the summary of these proposed amendments why</p>	The committee believes that the proposal is fair to both sides and that these cases do not require

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				<p>the stated objectives justify giving collection attorneys and their clients preference over other civil parties and counsel. The same reasons for instituting the fast-track rules apply here—the longer the delay, the more chance witnesses will disappear or their memories will fade and documents will be lost. (Yes, it's true that in the majority of collection cases the defendants either do not answer or a default is taken--and most do not have much of a defense. But there are still a number of cases where the plaintiff has mistakenly identified a collection defendant, mistakenly sued a defendant where nothing is owed, or miscalculated the balance or interest on a debt. It is unclear why defendants in these cases should not be given the same opportunity to defend in a timely manner as other civil defendants.)</p> <p>Moreover, if these changes are adopted, collection matters will be open for much longer than other cases, clogging up court files and requiring different procedures and hearing dates. This potentially could cause even more disruption than tracking this type of case like any other fast-track matter. Of course, the proponents of these rule changes may have additional information concerning the number of collection cases and how they negatively affect court processes and procedures.</p>	<p>active case management, unless a responsive pleading is filed. The addition of 120 days for service is intended to allow time to locate difficult-to-find defendants.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				Agree with the suggested amendment to rule 3.1385 re taking all hearings off calendar once a plaintiff has filed a notice of settlement. This change is long overdue in correcting a problem for parties and the court in how to apply the fast-track rules once an installment agreement or conditional settlement is reached by the parties.	No response necessary.
46.	Mr. Harvey Moore Esquire Bidna & Keys Newport Beach	A	N	<p>I have been licensed to practice in California since 1981 and I am a member of the Board of Directors of the California Creditors Bar Association and the National Association of Retail Collection Attorneys. My firm employs approximately 45 people, most of whom are involved in the field of retail and commercial collections. Our clients include many national credit grantors and debt buyers. We file collection cases in every county in the state of California in our efforts to recover unpaid debts for our clients.</p> <p>I urge the Judicial Council to adopt the proposed rules taking simple collection cases out of the fast-track system. We believe the changes are important for a number of reasons, including the following:</p> <p>Statewide rules eliminate the problem of county-by-county variations which are difficult for lawyers practicing in a variety of</p>	The commentator's support for the proposal is noted.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>jurisdictions.</p> <p>The current 60-day requirement to effect service of process is problematic in collections cases with a highly mobile population, leading to unfair sanctions when all diligence is being exercised to locate defendants.</p> <p>The proposal will eliminate meaningless status conferences for collections cases which normally go by default, saving resources for courts, lawyers, and litigants.</p> <p>Any defendant who requests can opt back into the regular case management process, so no one will be deprived of any rights.</p>	<p>If a defendant files a responsive pleading, the case is subject to regular case management. (Rule 3.740(c)(2).)</p>
47.	Ms. Pam Moraida Court Program Manager Superior Court of California, County of Solano	A	N	Agree with proposed changes.	The commentator's support for the proposal is noted.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
48.	Ms. Andrea Nelson Director of Operations Superior Court of California, County of Butte	N	N	Since 95 percent or more of all collections cases are resolved within 60 to 90 days and the court already has discretion to continue the case management conferences with good cause with the remaining percentage, this rule or exception to other rules is unnecessary.	It may be that collections cases are being dealt with effectively in some courts under the current rules. However, the committee received information that unnecessary case management conferences are often held in collections cases. The new and amended rules and revised form will establish simplified procedures for all collections case.
49.	Ms. Julie Nitao Paralegal The Guerrini Law Firm Pasadena	A	Y	No specific comment.	No response required.
50.	Mr. Jeffrey Paris Partner Law Firm Santa Monica	A	Y	The amount of judicial resources squandered on such cases is incredible. Further, it makes litigating such cases unnecessarily expensive by compelling needless court appearances, as these court appearances and the paperwork that accompanies them add nothing to resolving the case.	The comment is noted. The committee believes that the proposal will eliminate unnecessary court appearances.
51.	Mr. Thomas Perry General Manager Edgar J. Lana, PC Lafayette	A	Y	No specific comment.	No response required.
52.	Mr. Matthew Quall Attorney Lang Richert & Patch	A	N	I understand the need for fast track for general litigation cases. The reasoning does not apply to collections cases. These cases do not drag	The commentator's support for the proposal is noted.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	Fresno			<p>on. The intent is to resolve them efficiently and timely. The fast track imposes upon collection attorneys and their process servers deadlines and restrictions that more often than not result in unnecessary attendance at case management conferences, orders to show cause, and review hearings. Most of the time, case management conferences are merely continued for 45–60 days after an attorney explanation that service is still being effectuated. These “non-appearances” simply clog up the court’s calendar. In addition, many attorneys will dismiss the action in light of pending order to show cause, then refile and start a process over, which, if not in fast track, could have run its course without the judicial and economic waste of resources.</p> <p>I am strongly in favor of the proposed changes and urge the Judicial Council to adopt the changes as drafted.</p>	
53.	Mr. Harlan Reese Harlan M. Reese & Associates San Diego	A	Y	<p>I not only agree with the proposed changes but can tell you from almost 20 years’ experience, as a volume debt collector, that using the court system for debt collection involves mostly uncontested matters.</p> <p>The issue is not one of liability; if it were, then the matter would be contested, and the proposed rule has an opt-in provision. Rather the case is a</p>	The commentator’s support for the proposal is noted.

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				<p>matter of getting the defendants served and submitting evidence via Code of Civil Procedure section 585 to obtain a judgment. The way the system exists now, each judicial district comes up with its own rules, forms, and sanctions. Thus, the result for the plaintiff's attorney and his or her client vary in terms of how to follow the rules work, which forms to submit and update, and how to deal with different calendars, not to mention paying varying sanctions.</p> <p>There is tremendous waste of court time in handling collection cases. At status and case management conferences, all the issues deal with service or the filing of the Code of Civil Procedure section 585 package.</p> <p>The courts still have control over these cases by setting an order to show cause for dismissal if the case is not brought to judgment or it is not dismissed within a year. I would like to give you one example of the current system.</p> <p>Let's say I represent a creditor with an unsecured obligation, and I file a lawsuit, serve the defendant but the defendant then jumps into a chapter 7 or 13 bankruptcy. My office files notice of the bankruptcy filing as required by the rules of court. There is no basis to seek relief of the stay.</p>	

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				<p>Most of the courts do not change how they deal with this fact pattern. They do not take the status conferences or case management conferences off calendar. My client, my office and the court system incur expenses in tracking these cases. We have to appear at many case management conferences until a discharge or dismissal of the bankruptcy is entered. If we fail to appear or hire an appearance attorney, then sanctions are imposed.</p> <p>The system should have uniform rules. The plaintiff can elect to seek relief and move forward or dismiss the case subject to reinstatement upon the bankruptcy dismissal.</p>	
54.	Mr. Mike Roddy Executive Officer Superior Court of California, County of San Diego	N	Y	<p>The following comments have been provided by our court's commissioners, staff attorneys, managers, and supervisors.</p> <p>Exempting collection matters from the case management time periods will not assist in the prosecution of these matters and will instead create numerous problems for the court. We tried to implement a similar system to that which is being proposed in order to exempt collection proceedings from the case management time periods and to streamline these proceedings for processing. We found the law firms handling these matters merely served</p>	

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				<p>them and then procrastinated and failed to prosecute the actions until they reached the next deadline, which for our purposes was 180 days. While the court’s failure to comply hearings initially decreased, the failure to prosecute hearings at the 180-day mark increased dramatically and the vast majority of collections cases ended up starting the process toward judgment at that time. We were forced to discontinue the practice after a year because our inventory of these types of cases had become too large to handle in a separate limited collections court.</p> <p>The proposed definition of “collections case” in rule 3.740 is too broad because it could be read to include auto deficiency actions, which are not simple cases and require more aggressive case management to get solved. A solution may be to include auto deficiency actions to the list of proceedings that are specifically excluded from the definition.</p> <p>The broad definition of “collections case,” as currently proposed, would also allow attorneys to attempt to fit other types of breach of contract cases into this classification in order to avoid more stringent case management timelines. This will create issues for court personnel who will be tasked with having to weed out the cases that are not truly collection matters.</p>	<p>If cases are incorrectly identified as collections cases creating difficulty for court personnel, the committee will consider further rule amendments to address this.</p>

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				<p>These changes, if implemented, would require a modification to the V3 Civil Case Management System clocks and work queues in order to alter the case designations and allow for the creation of new time periods for the new classifications, resulting in increased costs for the courts.</p> <p>Rule 3.740, as proposed, does not limit its application to account stated matters. In V3, there are designations for “Goods Sold and Delivered” and “Promissory Note” that are included under the classification of “Collections,” which are currently scheduled to be sent to our regular civil calendar department. This proposed rule will cause various types of collection matters to be handled differently and</p>	<p>Advisory committee staff has consulted with CCMS project management and AOC Information Systems staff and determined that although some modification will be required (to system clocks and work queues), the proposal will not require programming of CCMS V3 and that they can be made to CCMS V3 and other case management systems in time to meet a July 1, 2007, effective date. Based on this, the committee recommends that this proposal be adopted effective July 1, 2007.</p> <p>The <i>Civil Case Cover Sheet</i> has been modified to distinguish rule 3.740 collections cases from other collections cases.</p>

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(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

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				<p>will result in confusion for court personnel and the bar.</p> <p>Proposed rule 3.740(e) states that if proofs of service on all defendants are filed or an order for publication of the summons is filed at least 10 court days before the order to show cause hearing “the court must continue the hearing to 360 days after the filing of the complaint.” What is the purpose of the hearing? Does this give the plaintiff 180 days to complete service by publication? If the proof of service is filed, does the hearing go off calendar?</p> <p>The proposed 180-day time period for service and 360-day time period for entry of judgments in collections cases are unnecessary and will result in creating unmanageable backlogs in the courts.</p> <p>If rule 3.740 is implemented, the <i>Civil Case Cover Sheet</i> form should be amended to remove the designation of “Collections” from the list of contract type actions and, instead, create a new separate case category entitled “Collections,” which will help attorneys and court staff identify this type of case for processing.</p>	<p>The order to show cause hearing is to determine the status of the matter and to allow the imposition of reasonable monetary sanctions if the court deems them appropriate. If the proof of service is filed at least 10 court days before the hearing, the hearing is continued to allow the plaintiff time to obtain a default judgment.</p> <p>After lengthy and thoughtful discussions, the committee proposed a 360-day period for a plaintiff to accomplish service and obtain a default judgment and the committee declines to modify this rule.</p> <p>The <i>Civil Case Cover Sheet</i> has been modified to distinguish rule 3.740 collections cases from other collections cases.</p>

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55.	Ms. Malinda Steele Collections Case Manager Lang, Richert & Patch Fresno	A	N	As the individual responsible for calendaring case management conferences and preparing case management conference statements for all the courts in the state, adopting this change would be beneficial in that many times, defendants in collection matters are difficult to locate. When dealing with a large volume of collection cases, it is difficult to manage the case management conference statements and case management conference appearances. Case management conference appearances on collections cases where a defendant has not been served have no purpose. The courts are getting bogged down with case management conferences that result only in continued case management conferences to allow more time to serve a defendant.	The commentator's support for the proposal is noted.
56.	Mr. Raymond L. Steinert Attorney Anaheim	N	N	I believe the reason the courts are so backed up is due to the number of collections cases filed. Giving collections cases special treatment is unfair to all other cases similar to collection (subrogation for example). It's also unfair to any other cases in general. If collection cases are given the break on appearances, why shouldn't all cases have the same break?  The fast-track rules were designed to speed up the legal process. No collections cases should be filed until the plaintiff (or his or her attorney) has all the documents to prove up his case,	The committee believes that the proposal will benefit the entire court system by eliminating unnecessary case management conferences and other court appearances in collections cases.

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				<p>including the assignments and original contracts and know where the defendant resides or can be served.</p> <p>I do not believe that the public is being served by requiring parties to abide by fast-track rules in filing their dog bite or breach of contract on a loan case while the "collection" firms get a break in the number of hearings they will make on all of their cases. Everyone should have to abide by the same rules. If it is changed for collections cases, it should be changed for all cases.</p>	
57.	Ms. Jeanne Sterba Attorney Law Offices of Jeanne Sterba Claremont	N	N	Do not agree with proposed changes.	
58.	Mr. Peter Stone Attorney P.O. Box 41199 Sacramento	AM	N	<p>Banish all local fast-track forms and require uniformity statewide.</p> <p>The proposal should address the following:</p> <ol style="list-style-type: none"> <li>1. Include all subrogation collection type cases;</li> <li>2. Forbid trial courts to issue monetary fast-track sanctions over \$50 and institute instead fast-track fees of \$50 against parties or attorney for failure to</li> </ol>	The comments are beyond the scope of this proposal.

## Collections Cases: Service and Case Management

(adopt California Rules of Court, rules 3.740 and 3.741; amend rules 3.110, 3.712, and 3.721; and revise form CM-010)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>meet certain deadlines to file forms, or move case along;</p> <p>3. Abolish all sanctions or fees that are not uniform statewide and restrict the ability of trial courts to charge fees or sanctions not specifically authorized in type and amount;</p> <p>4. Reduce rather than increase the number of fast-track forms and appearances, especially for cases under \$25,000;</p> <p>5. Publish the amount of fast-track sanctions each court, and each judge are collecting, per month for each of the last 75 months;</p> <p>6. Replace all fast-track sanctions with some sort of filing fee to remove the moral and ethical approbation attached thereto; and</p> <p>7. Forbid trial courts from dismissing plaintiff's cases if the plaintiff is still attempting service.</p>	
59.	Michael Stone Attorney El Segundo	N	N	No specific comment.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
60.	Mr. Ben Stough Court Executive Officer Superior Court of California, County of Mendocino Ukiah	A	N	No specific comment.	No response required.
61.	Mr. Matthew Taylor Attorney The Guerrini Law Firm Pasadena	A	Y	No specific comment.	No response required.
62.	Ms. Tara Trantham Assistant General Counsel Resurgent Capital Services Greenville, South Carolina	A	Y	Agree with proposed changes.	No response required.
63.	Hon. Paul Turner Presiding Justice Court of Appeal, Second Appellate District Los Angeles	AM	N	Most collections cases include attorney fee clauses. As drafted, the definition makes no reference to attorney fees. I suggest after “interest” inserting the words “and attorney fees.”	The committee agrees and has modified rule 3.740(a) accordingly.
64.	Mr. Mark Vogt Attorney Lang, Richert & Patch Fresno	A	N	The need to process general litigation cases in a timely and efficient manner is recognized and understood. This reasoning does not apply to collections cases. Collections cases are primarily disposed of via default judgments. The fast-track process creates unnecessary court appearances in which judges routinely continue out 60-90 days to effectuate service on the defendant. These nonappearances simply clog	The commentator’s support for the proposal is noted.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				up the courts' calendar. Further, many attorneys will wait right up to an order to show cause date, dismiss and then refile, creating a whole new calendar of headaches and waste of judicial resources. I am strongly in favor of the proposed changes and urge the Judicial Council to adopt the changes as drafted. Thank you very much for your consideration.	
65.	Ms. Maureen A. Ward Attorney	N	N	It sounds good, but having worked in this area, I think the proposal will result only in an increase in work for the court and a loss of trees. There are so many exceptions to the "usual case" and therefore there will be motions for these exceptions as well as 473 motions to set aside the dismissal.	
66.	Ms. Mona Ward Long Beach	N	N	The collection agencies are always running late, and without court monitoring during the year there would just be a truckload of requests to set aside dismissals.  You are trading a manageable problem for a larger problem.  The snag in the system are the judges who want to visit and micromanage rather than move cases along, set dates, and keep the collection firms on task.	The committee believes that the proposal will benefit the entire court system by eliminating unnecessary case management conferences and other court appearances in collections cases.
67.	Mr. Mitchell Wong	A	N	No specific comment.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
	Attorney San Bruno				
68.	Mr. Flint Zide Attorney Law Offices of Harris & Zide South Pasadena	A	N	<p>Making statewide rules would eliminate the problem of county-by-county variations, which makes it difficult in my practice because I file lawsuits in every county in the state.</p> <p>Furthermore, the current 60-day requirement to effect service of process is impossible to adhere to in all cases because of a highly mobile population and defendants who evade service, leading to unfair sanctions when all diligence is being exercised to locate defendants.</p> <p>Furthermore, the proposal will eliminate meaningless status conferences for collections cases that normally go by default, saving resources for courts, lawyers, and litigants.</p> <p>Finally, any defendant who requests can opt back into the regular case management process, so no one will be deprived of any rights.</p>	<p>The commentator's support for the proposal is noted.</p> <p>If a defendant files a responsive pleading, the case is subject to regular case management. (Rule 3.740(c)(2).)</p>