

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Case Management Subcommittee
Hon. Frank Roesch, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933,
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DATE: August 8, 2008

SUBJECT: Civil Case Management: Settlements (amend Cal. Rules of Court,
rule 3.1385) (Action Required)

Issue Statement

The current procedures for notice of settlement sometimes pose practical problems (1) in cases with minors' compromises, and (2) in situations where a party has filed and served a notice of settlement but is unable to dismiss the action within 45 days. The proposed amendments to rule 3.1385 of the California Rules of Court address these problems by providing additional time, under certain circumstances, for completing a settlement after notice of settlement has been provided to the court.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, amend rule 3.1385 of the California Rules of Court.

The text of amended rule 3.1385 is attached at pages 5–6.

Rationale for Recommendation

Attorneys who have worked with rule 3.1385 on notice of settlements have identified some practical problems in implementing the rule under certain circumstances. This proposal would add two new subdivisions to the rule to address these problems.

First, a new subdivision (d) would be added relating to settlements involving minors and persons with disabilities. There is currently no exception in the notice provisions of the rule for those situations. New subdivision (d) would provide that, if the settlement of a case involves the compromise of the claim of a minor or person with a disability, the court may not set an Order to Show Cause (OSC) hearing before the court has held a hearing to approve the settlement, provided the parties have filed appropriate papers to seek court approval of the settlement.

Second, a new subdivision (e) would be added providing for additional time to complete settlements in certain circumstances. Specifically, if a party that has filed a notice of settlement under rule 3.1385(a) concludes that there is good cause why the case cannot be dismissed within 45 days, the party must notify the court and other parties of its inability to dismiss the case within the prescribed time, show good cause in writing for its inability to do so, and identify an alternative time period for dismissal. The notice and supporting declaration must be served and filed at least five court days before the time for requesting dismissal has elapsed. If good cause is shown, the court must continue the matter to allow additional time to complete the settlement. Under new subdivision (e), the court would be authorized to take such other actions as may be appropriate for the proper management and disposition of the case.

Alternative Actions Considered

The committee considered not adding subdivision (e) to the rule, thus limiting the amendment only to settlements requiring court approval. The committee also considered not proposing any amendment at all to the rule. A concern was raised that the proposed amendments will preclude a court from holding OSC hearings and thus hinder the court's ability to manage cases. The committee concluded that the proposed amendments, which preclude only those hearings for which good cause exists for delayed dismissal, will eliminate unnecessary hearings and court appearances, and thus benefit both courts and litigants.

In developing this proposal, the committee also considered including an Advisory Committee Comment on subdivision (e), which contained examples of good cause for requests for time to complete a settlement.¹ The committee concluded that the comment was neither necessary nor desirable.

¹ The text of the comment considered was:

Subdivision (e). Examples of matters that may constitute good cause for a request for more time to complete a settlement include the inability to resolve a medical lien, the unavailability of a signatory to the agreement, and the need to obtain the approval of the settlement by a public entity.

Finally, the committee considered, and rejected as unnecessary, adding to rule 3.1385 an additional subdivision on the effect of the notice of settlement, which would have provided that once a party seeking affirmative relief files a notice of settlement, the court must vacate all hearing, case management, and trial dates.

Comments From Interested Parties

The proposed revisions to rule 3.1385 were circulated for public comment in the spring 2008 comment cycle. Comments were received from nine individuals and organizations, including three courts and the Trial Court Presiding Judges Advisory Committee/Court Executive Advisory Committee Joint Rules Working Group (TCPJAC/CEAC).² Most of the commentators, including TCPJAC/CEAC, supported the proposal.

One commentator proposed some modifications to clarify and tighten the text of the amendment (comment 1). The committee agreed with the proposed changes and modified the rule in response to the comment.

One private attorney objected that the proposal was unnecessary because rule 3.1385(c) already addresses the issue of how to handle settlements that would not be completed within 45 days (comment 2). That subdivision, however, only addresses conditional settlements, while the new subdivisions deal with other types of settlements, those that are not conditional but cannot be finalized within 45 days due to factors outside the terms of the settlement itself.

Another private attorney agreed with adding subdivision (e), but objected to subdivision (d) in the mistaken belief that it would require an additional hearing (comment 4). Subdivision (d) does not add a further hearing to a case involving a minor or person with disability, but merely recognizes that a hearing is already required in such cases for court approval of the settlement.

The Superior Court of Los Angeles County objected to the proposal on the grounds that it would preclude the court from holding an OSC hearing at times when the court needs to bring the parties to court to properly manage a case (comment 5). The committee disagreed; it noted that subdivision (d) will only preclude an OSC hearing when the parties have already filed papers seeking approval of the settlement, but the court had not yet held an approval hearing. Proposed subdivision (e) will not preclude a court from holding an OSC hearing in cases where the court determines that there is not good cause for granting a requested continuance. Further, subdivision (e) expressly provides that the court retains discretion to take what actions it finds appropriate for proper case management.

² A chart summarizing the comments and the committee's responses is attached at pages 6–11.

Superior Court of San Diego County proposed two modifications of the proposal (comment 7). First, it asked that subdivision (d) be modified to require that the initial notice of settlement in a case that involves the compromise of a claim of a minor or person with disability include that fact in the initial notice. However, the content of the *Notice of Settlement* (mandatory form CM-200) is outside the scope of the proposal that was circulated for public comment. This suggestion to revise the form will be considered by the committee in the future as time and resources permit. The court also proposed that the rule be further modified to require a party to appear ex parte in order to establish good cause why the case should not be dismissed. Such a requirement would defeat the purpose of the proposed amendments, which is to eliminate unnecessary hearings and court appearances.

All other commentators agreed with the proposal.

Implementation Requirements and Costs

The rule may require implementation of an earlier review process by the courts in relation to OSC hearings, in order to permit review of requests made under this rule and determination by a court as to whether good cause for a continuance exists. The amended rule should, however, reduce the number of OSC hearings.

Attachments

Rule 3.1385 of the California Rules of Court is amended by the Judicial Council, effective January 1, 2009, to read:

1 **Rule 3.1385. Duty to notify court and others of settlement of entire case**

2
3 **(a) Notice of settlement * * ***

4
5 **(b) Dismissal of case**

6
7 Except as provided in (c) or (d), each plaintiff or other party seeking
8 affirmative relief must serve and file a request for dismissal of the entire case
9 within 45 days after the date of settlement of the case. If the plaintiff or other
10 party required to serve and file the request for dismissal does not do so, the
11 court must dismiss the entire case 45 days after it receives notice of
12 settlement unless good cause is shown why the case should not be dismissed.
13

14
15 **(c) Conditional settlement * * ***

16
17 **(d) Compromise of claims of a minor or disabled person**

18 If the settlement of the case involves the compromise of the claim of a minor
19 or person with a disability, the court must not hold an order to show cause
20 hearing under (b) before the court has held a hearing to approve the
21 settlement, provided the parties have filed appropriate papers to seek court
22 approval of the settlement.
23

24 **(e) Request for additional time to complete settlement**

25 If a party who has served and filed a notice of settlement under (a)
26 determines that the case cannot be dismissed within the prescribed 45 days,
27 that party must serve and file a notice and a supporting declaration advising
28 the court of that party's inability to dismiss the case within the prescribed
29 time, showing good cause for its inability to do so, and proposing an
30 alternative date for dismissal. The notice and a supporting declaration must
31 be served and filed at least 5 court days before the time for requesting
32 dismissal has elapsed. If good cause is shown, the court must continue the
33 matter to allow additional time to complete the settlement. The court may
34 take such other actions as may be appropriate for the proper management and
35 disposition of the case.

SPR08-24**Civil: Case Management** (amend Cal. Rules of Court, rule 3.1385)

Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Julie A. Goren, Esq. Lawdable Press Sherman Oaks	A	<p>I recommend some edits to correct a typo and for clarity:</p> <p>In (d) insert “a” between “with” and “disability”.</p> <p>In (e) do the following:</p> <p>(i) insert “the prescribed” between “within” and “45”</p> <p>(ii) delete “notify the court and the . . . alternative date for dismissal.” and insert the following in its place: “file with the court and serve on all parties a notice and a supporting declaration advising of that party’s inability to dismiss the case within the prescribed time, showing good cause for its inability to do so, and proposing an alternate date for dismissal.”</p>	<p>The committee has revised the text of the proposed rule in response to this comment. However, it has retained the terminology “serve and file” (see rule 1.21(b)) rather than the proposed language on that subject.</p>
2.	Law Offices of Martin F. Goldman By Martin F. Goldman Attorney Los Angeles	N	<p>This modification seems to be unnecessary. Rule 3.1385 (c) already provides for the specification of a dismissal date, when the conditional settlement will not be completed within 45 days of the filing of the notice of Settlement. This amendment simply places a further unnecessary burden upon both counsel and the court. If the case has been settled to the satisfaction of the parties, and the parties have appropriately and properly notified the Court of the settlement, using the Mandatory Form CM200, which specifically advises the Court of the “conditional settlement” AND the date upon which a dismissal will be filed, there is no need or valid reason to</p>	<p>Rule 3.1385(c) addresses situations where the reasons why a settlement cannot be dismissed within 45 days are contained within the terms of the settlement. The proposed revision would address circumstances outside the terms of the settlement.</p>

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			<p>impose upon counsel, the obligation to prepare a declaration setting forth any cause ... good or bad, why the terms of a settlement agreed upon between the parties, needs to pass muster to the Court. At the same time, there is no need for the Court to expand its burden in having to review this proposed additional declaration to have a “good cause” hearing on a matter that has been settled and one in which the Court should not have any additional time involvement, other than to calendar its dismissal date per the [Notice of Settlement] CM200 notification.</p> <p>Instead, we seem to have a conflict in the interests of litigants and the Courts’ Case Management computers. Too many judges seem to have some difficulty in not being able to close a case from their “active list” and are too concerned about their “statistics,” which would have to hold open a file during the extended “conditional” period of time.</p> <p>It seems that the conflict between the Court's desire to close a file, and the litigants desire to leave it open until all aspects of the settlement are concluded is more easily accomplished by simply creating a new category in a computer system, to allow for “INACTIVE per conditional settlement,” than by imposing a further burden upon an already too burdened litigation process as suggested by this amendment.</p>	

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3.	Orange County Bar Association By Cathrine Castaldi, President	A	No specific comments.	Commentator's approval is noted.
4.	Alex Scheingross San Diego	AM	*Forget about part D, who needs or wants another hearing. It is not a good idea. Part E is a great idea. The court likes to make lots of square pegs fit into round holes. This provision recognizes that isn't always the case.	The goal of subdivision (d) of the proposed rule is to eliminate unnecessary hearings, not add to them. The commentator's agreement with proposed subdivision (e) is noted.
5.	Superior Court of Los Angeles County	N	Do not agree with proposed amendment to Rule 3.1385, which would preclude the court from holding an OSC hearing before the court has held a hearing to approve a minor's compromise (subpart (d)) and would require the court to continue an OSC hearing based on a declaration stating that the party is unable to dismiss the case within the prescribed time (subpart (e)). It is often necessary to bring the parties in on an OSC hearing in order to properly manage and dispose of the case, and the court should have discretion to do so. Frequently, there is no way for the court to determine whether there is a signed, enforceable settlement agreement, and under the current proposal, the parties could substantially delay the case by obtaining a continuance of the OSC date, at which time the court determines the case has not really been settled and has to go back on the court's calendar.	Subdivision (d) would only preclude order to show cause (OSC) hearings when a party has already filed papers seeking approval of the settlement. Subdivision (e) would not preclude a court from holding an OSC hearing when it determines there is not good cause for granting a requested continuance. Further, the final provision of subdivision (e) expressly provides that the court retains discretion to take what actions it finds appropriate for proper case management.

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6.	Superior Court of San Bernardino County By Debra Meyers, Director, Staff Counsel Services and Self-Help Division	A	No specific comments.	The commentator's agreement is noted.
7.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	AM	<p>1. The new proposed subsection (d) of Cal. Rules of Court, rule 3.1385 should be amended to require the party filing a notice of settlement in a case that involves the compromise of a claim of a minor or person with disability to include that fact in the initial notice. It may not be clear from the court record whether such a compromise is going to be required and, by requiring it in the notice, court staff will be able to note the requirement for tracking purposes.</p> <p>2. The new proposed subsection (e) of Cal. Rules of Court, rule 3.1385 is unclear as to the process that should be followed by the parties and the court related to extending the 45-day dismissal date. The rule should be amended to require the party who has served the notice of settlement to appear ex parte and establish good cause why the case should not be dismissed. As drafted it is unclear how the continuance will be made, i.e., via court order or ... [ellipsis in original]; how the requesting party will receive notice that the court has found good cause to continue the dismissal date; and, depending on the process to be followed, whether 5 court days will be sufficient to process such a request.</p>	<p>1. The content of the <i>Notice of Settlement</i> (form CM-200) is outside the scope of the proposal that was circulated for public comment. The proposal will be considered by the committee in the future as time and resources permit.</p> <p>2. The committee disagrees. The proposed rule amendment requires the party seeking a continuance of an OSC hearing to file notice of the party's need for more time to complete the settlement and a declaration in support. The point of the proposed revision is to eliminate unnecessary court appearances. Requiring the party to appear at court to make that request would defeat the purpose of the rule.</p>

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8.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator's agreement is noted.
9.	TCPJAC/CEAC Joint Rules Working Group By Patrick Danna, Court Services Analyst and Lead AOC Staff San Francisco	A	The Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group has no objection to the proposal.	Commentator's agreement is noted.