

**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. Elihu M. Berle, Chair  
Case Management Subcommittee, Hon. Robert B. Freedman, Chair  
Patrick O'Donnell, Committee Counsel, 415-865-7665,  
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DATE: September 28, 2005

SUBJECT: Notice of Termination or Modification of Stay (amend Cal. Rules of Court,  
rule 224; adopt form CM-181) (Action Required)

Issue Statement

Rule 224 of the California Rules of Court requires that the court be given notice of a stay of a proceeding and notice that a stay has been vacated or is no longer in effect. The rule is unclear as to who should give notice of a termination or modification of a stay if the party who originally filed the notice of stay fails to notify the court. In 2004, a form was adopted to be used by a party to provide notice of a stay; however, no comparable form has been adopted for a party to provide notice of the termination or modification of a stay.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2006:

1. Amend rule 224 of the California Rules of Court to provide that, if the party that filed the notice of stay fails to file a notice of termination or modification of stay, other parties in the case must do so; and
2. Adopt *Notice of Termination or Modification of Stay* (form CM-181).

The text of amended rule 224 is attached at page 4. New mandatory form CM-181 is attached at pages 5–6.

## Rationale for Recommendation

### *Amend rule 224 (Duty to Notify Court and Others of Stay)*

Current rule 224 requires the party who filed the stay to notify the court and others that the stay has terminated. Rule 224(d) would be amended to specify that notice must be given of any modification as well as of any termination of a stay. Also, the party who filed the notice of stay may not be in a position to provide the notice of termination or modification of the stay (for example, if they have been dismissed from the case). So to ensure that the court and others receive proper notice of the termination or modification of a stay, the following words would be added to subdivision (d): “If that party [i.e., the party that filed the notice of stay] fails to do so, any other party in the action who has knowledge of the termination or modification of the stay must serve and file a notice of termination or modification of stay. Once one party in an action has served and filed a notice of termination or modification of stay, other parties in the action are not required to do so.”

### *Notification of Stay or Notice of Termination (form CM-181)*

Rule 224(d) provides that, “when a stay is vacated or is no longer in effect, the party who filed the notice of stay<sup>1</sup> must immediately serve and file a notice that the stay is vacated or is no longer in effect.” There is presently no standard Judicial Council form available for the purpose of providing notice of termination or modification of a stay. It would be helpful to the public and the courts to have such a form.

The proposed new form would implement the notice requirements of rule 224(d) as amended. It would be a mandatory form that parties would use to notify the court and others that a stay has been terminated or modified. The form would require that declarants identify who they are and the date on which the *Notice of Stay of Proceedings* was filed. The form would also require the declarants to indicate whether the stay has been vacated by court order, is no longer in effect, or has been modified, and whether the stay has been terminated or modified with respect to all parties or only certain parties.

## Alternative Actions Considered

The committee considered the public comments discussed below. As explained, it agreed with some suggestions and disagreed with others.

## Comments From Interested Parties

The proposed rule amendment and new form were circulated for public comment in the spring of 2005. Eight comments were received on the proposal. The commentators included court administrators, a local bar association, and the Committee on Administration of Justice of the State Bar of California. A chart summarizing the comments and the committee’s responses is attached at pages 7–8. The commentators generally agreed with the proposal, although four suggested modifications.

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<sup>1</sup> The party who filed the notice of stay may be either “[t]he party who requested or caused a stay of a proceeding...[or] [i]f the person who requested or caused the stay has not appeared, or is not subject to the jurisdiction of the court, the plaintiff ....” (Rule 224(a).)

On rule 224, the committee disagreed with the suggestion that the rule should be modified to specify circumstances under which another party must give notice of termination of a stay if the party who originally notified the court of the stay fails to provide such notice. Specifying the circumstances in which the parties might give such notice might be misconstrued as a limitation on the obligation to give notice rather than as a clarification of the rule.

On the *Notice of Termination or Modification of Stay* (form CM-181), the committee agreed with a suggestion that a proof of service should be added for the convenience of the party serving the notice. However, the committee did not agree with the suggestion that the form should be optional. The committee noted that the notice of stay itself is mandatory, and concluded that this notice of termination or modification should also be mandatory. This will establish greater consistency and uniformity of practice, and will ensure that all the desired information is provided.

#### Implementation Requirements and Costs

Some costs will be incurred in making the new form available to the public. However, the use of this form to notify courts that stays have been terminated or modified should result in benefits to both the courts and litigants in terms of more efficient and timely action on pending cases that have been stayed.

Attachments

Rule 224 of the California Rules of Court is amended, effective January 1, 2006, to read:

1 **Rule 224. Duty to notify court and others of stay**

2  
3 (a)–(b) \*\*\*

4  
5 (c) **[Contents of notice]** The notice must state whether the case is stayed with  
6 regard to all parties or only certain parties. If it is stayed with regard to only to  
7 certain parties, the notice must specifically identify those parties. The notice  
8 must also state the reason that the case is stayed.

9  
10 (d) **[Notice that stay is ~~vacated~~ terminated or modified]** When a stay is vacated,  
11 ~~or~~ is no longer in effect, or is modified, the party who filed the notice of the  
12 stay must immediately serve and file a notice ~~that the stay is vacated or is no~~  
13 ~~longer in effect~~ of termination or modification of stay. If that party fails to do  
14 so, any other party in the action who has knowledge of the termination or  
15 modification of the stay must serve and file a notice of termination or  
16 modification of stay. Once one party in the action has served and filed a notice  
17 of termination or modification of stay, other parties in the action are not  
18 required to do so.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  <hr style="width: 10%; margin-left: 0;"/>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER:  DEFENDANT/RESPONDENT:	CASE NUMBER:  DEPT.:
<b>NOTICE OF TERMINATION OR MODIFICATION OF STAY</b>	JUDICIAL OFFICER:

**To the court and all parties:**

1. A *Notice of Stay of Proceedings* was filed in this matter on *(date)*:
2. Declarant named below is
  - a.  the party  the attorney for the party who requested or caused the stay.
  - b.  other *(describe)*:
3.  The stay described in the above referenced *Notice of Stay of Proceedings*
  - a.  has been vacated by an order of another court. *(Attach a copy of the court order.)*
  - b.  is no longer in effect.
4.  The stay has been modified *(describe)*:
  
5. The stay has been vacated, is no longer in effect, or has been modified
  - a.  with regard to all parties.
  - b.  with regard to the following parties *(specify by name and party designation)*:

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

Date:

_____ (TYPE OR PRINT NAME OF DECLARANT)		_____ (SIGNATURE OF DECLARANT)
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PLAINTIFF:  DEFENDANT:	CASE NUMBER:
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**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF TERMINATION OR MODIFICATION OF STAY**

**(NOTE: You cannot serve the Notice of Termination or Modification of Stay if you are a party in the action. The person who served the notice must complete this proof of service.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:
  
2. I served a copy of the *Notice of Termination or Modification of Stay* by enclosing it in a sealed envelope with postage fully prepaid and *(check one)*:
  - a.  deposited the sealed envelope with the United States Postal Service.
  - b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  
3. The *Notice of Termination or Modification of Stay* was mailed:
  - a. on *(date)*:
  - b. from *(city and state)*:
  
4. The envelope was addressed and mailed as follows:
 

a. Name of person served:  Street address:  City:  State and zip code:	c. Name of person served:  Street address:  City:  State and zip code:
b. Name of person served:  Street address:  City:  State and zip code:	d. Name of person served:  Street address:  City:  State and zip code:

Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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

Date:

_____ (TYPE OR PRINT NAME OF DECLARANT)	_____ (SIGNATURE OF DECLARANT)
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**SPR05-12**

**Notice of Termination or Modification of Stay**  
 (adopt form CM-181; amend Cal. Rules of Court, rule 224)

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Mr. Mike Belote California Advocates, Inc. Sacramento	A	Y	No specific comment.	No response required.
2.	Civil Managers Superior Court of California, County of Orange Santa Ana	AM	Y	<u>Form CM-181:</u>  Add a proof of service by mail.	<u>Form CM-181:</u>  The committee agreed. A proof of service has been added to the form.
3.	Superior Court of California, County of Los Angeles	A	Y	No specific comment.	No response required.
4.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	Y	The following comments were received from our court’s executives, managers, and supervisors:  1. <u>Rule 224:</u> I do not necessarily agree with allowing a party, other than the party who filed the stay, to file a notice terminating or modifying a stay. The example given is not clear. Under what circumstances would a dismissed defendant be required to notify the court that a stay has been terminated? The party has been dismissed from the case. Amending the proposed rule to specify situations when it would be acceptable for another party to file the notice would clarify.  2. <u>Form CM-181:</u> Item 1 should state: “A Notice of Stay of Proceedings was filed in this	1. <u>Rule 224:</u> The committee disagreed. The amendment to require that if the party who filed the stay fails to file a notice of termination, any other party with knowledge of the termination must do so, will insure that the court receives notice of the termination. Specifying circumstances where another party might file the notice might be construed as limiting the rule rather than clarifying it.  2. <u>Form CM-181:</u> The addition of the name of the party filing the

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Committee Response</b>
				matter on _____ by _____.” 3. Combine items 4 and 5.	notice is not necessary.
5.	Ms. Pam Moraida Court Program Manager Superior Court of California, County of Solano Fairfield	A	N	No specific comment.	No response required.
6.	Ms. Patti Mora-Widdows Court Program Manager Superior Court of California, County of Ventura	AM	N	Make this form optional instead of mandatory.	The committee disagreed. Like the <i>Notice of Stay of Proceedings</i> form, this notice should be standardized throughout the state and contain the desired information.
7.	Committee on Administration of Justice The State Bar of California San Francisco	AM	Y	The Committee on Administration of Justice supports this proposal.	No response required.
8.	Mr. Dean Zipser President Orange County Bar Association Irvine	A	Y	No specific comment.	No response required.