



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

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Title	Agenda Item Type
Judicial Council-Sponsored Legislation (Civil Cases): Judicial Arbitration Statutes	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Code Civ. Proc., §§ 1141.20 and 1141.23	December 14, 2010
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 29, 2010
Hon. Marvin R. Baxter, Chair	Contact
Civil and Small Claims Advisory Committee	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov
Hon. Dennis M. Perluss, Chair	Daniel Pone, 916-323-3121 daniel.pone@jud.ca.gov

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### Executive Summary

The Policy Coordination and Liaison Committee (PCLC) and Civil and Small Claims Advisory Committee (advisory committee) recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure sections 1141.20 and 1141.23 to encourage settlement following judicial arbitration and reduce the number of trial de novo requests. The amendments would (1) provide that a party need not file a request for a trial de novo to stop entry of the arbitrator's award as the judgment in the case but instead could file a request for dismissal; and (2) give parties up to 60 days after the filing of the arbitrator's award to file either of the requests. These amendments should reduce costs for the parties and the courts associated with preparing, filing, and processing unnecessary trial de novo requests.

### Recommendation

The Policy Coordination and Liaison Committee and Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure sections 1141.20 and 1141.23 to:

1. Provide that the filing of a request for dismissal will prevent the entry of the judicial arbitrator's award as the judgment in the case; and
2. Provide that parties have 60 days following the filing of the judicial arbitrator's award, rather than 30 days, to file either a request for dismissal or a request for a trial de novo.

The text of the proposed statutory amendments is attached at page 5.

### **Previous Council Action**

California Code of Civil Procedure sections 1141–1141.31 establish the judicial arbitration program, a court-connected, nonbinding arbitration program for civil cases valued at \$50,000 or less. The Legislature originally established the judicial arbitration program as a limited experiment in 1978, and the Judicial Council was required to review the effectiveness of this program. In 1983, the Judicial Council submitted its report to the Legislature, generally concluding that the judicial arbitration program was a valuable dispute resolution mechanism that had favorably affected the cost, complexity, and time associated with litigation of smaller civil cases. Based on this report, the council recommended that the sunset on the authorizing statutes be eliminated so that the judicial arbitration program could be retained.

As part of this legislation, the council sponsored a proposal to amend Code of Civil Procedure section 1141.20 to increase the time for filing a request for a trial de novo from 20 days to 30 days following the filing of the judicial arbitrator's award.<sup>1</sup> This change was recommended to “reduce the number of prophylactic requests for trial de novo by giving clients and principals, particularly those who reside out of state, more time to decide whether to accept the arbitration award.”<sup>2</sup>

Neither section 1141.20 nor section 1141.23 has been amended since this council-sponsored legislation was adopted in 1984.

### **Rationale for Recommendation**

Under current law, superior courts with 18 or more judges are required to have a judicial arbitration program for unlimited civil cases. The program is optional for superior courts with fewer than 18 judges and for limited civil cases (Code Civ. Proc., § 1141.11). The judicial arbitration statutes currently provide that the parties have 30 days after the arbitrator files his or her award to request a trial de novo, and that, if the request is not filed, the arbitrator's award will be entered as the judgment of the court (see Code Civ. Proc., §§ 1141.20, 1141.23).

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<sup>1</sup> Sen. Bill 1251; Stats. 1984, ch. 1249.

<sup>2</sup> October 23, 1983, report to Judicial Council's Superior Court Committee from Administrative Office of the Courts staff attorney Morris Beatus.

The current statutory structure appears to encourage parties to file requests for a trial de novo even if they are satisfied with the arbitrator's award and do not want a new trial. There are many reasons that parties may not want a judgment entered against them in court. For example, job and credit applications often ask whether a judgment has been entered against the applicant, so entry of a judgment could affect parties' employability or creditworthiness. Thus, even if a party is satisfied with the arbitrator's award, the party may not want that award to become a judgment. Under the current statutes, however, the only way for that party to prevent the award from being entered as a judgment is to file a request for a trial de novo, even if the party does not intend to bring the matter to trial.

The PCLC and advisory committee are proposing that the council sponsor legislation to amend the Code of Civil Procedure to provide that the arbitrator's award will be entered as the judgment in a case unless a party files either a request for a trial de novo or a request for dismissal within 60 days after the filing of the arbitrator's award. The committees believe that this statutory change will encourage settlement following judicial arbitration and reduce the number of trial de novo requests. Giving parties the option of filing a request for dismissal to stop entry of the arbitrator's award as the judgment will allow parties who are satisfied with that award, or who are able to reach agreement with the help of that award, to settle their cases without also having to file a trial de novo request. This, in turn, will reduce costs for both the parties and the courts associated with preparing, filing, and processing these trial de novo requests. Giving parties an additional 30 days before the arbitrator's award is entered as the judgment should also increase the number of cases in which the parties have sufficient time to work out the details of a settlement, further reducing the number of trial de novo requests that are filed.

The committees also believe this change will allow courts to more accurately assess the impact of judicial arbitration on their caseloads. When a party files a trial de novo request, that request will be a more reliable indicator that the party genuinely seeks a trial de novo. Consequently, the courts will be able to focus their resources on those cases that may need postarbitration trials. In addition, the number of postarbitration requests for dismissal will more accurately indicate the impact of the judicial arbitration program on case settlement.

### **Comments, Alternatives Considered, and Policy Implications**

Two legislative proposals to amend these judicial arbitration statutes were circulated for public comment. The first proposed amendments to Code of Civil Procedure sections 1141.20 and 1141.23 were circulated for public comment between April 19 and June 18, 2010, as part of the regular spring comment cycle. Those amendments would have given the parties the alternative of filing a notice of settlement, rather than a request for dismissal, within 30 days after issuance of the arbitrator's award to stop the award from being entered as a judgment. Seven individuals and organizations submitted comments on that proposal, six of whom agreed with the proposal. One agreed with the proposal if modified, suggesting an alternative approach: to give parties additional time to work out the terms of a settlement and allow a request for dismissal, rather than a notice of settlement, to stop the award from being entered as a judgment, because there are circumstances in which a case is not ultimately dismissed following the filing of a notice of

settlement. The advisory committee agreed with this commentator's suggestion and prepared a modified proposal for recirculation that incorporated this approach.

The modified proposal containing the revised proposed amendments to Code of Civil Procedure sections 1141.20 and 1141.23 recommended in this report was circulated for public comment between August 2 and September 3, 2010. Seven individuals and organizations submitted comments on this modified proposal. Six agreed with the proposal, one of whom was the commentator who suggested the modification. One commentator did not agree, opining that the proposal would not encourage settlements or reduce the number of trials de novo. While it is possible that, even with these amendments, parties or attorneys in some cases will still file a trial de novo request, rather than a request for dismissal, simply to prevent entry of the arbitrator's award as the judgment, the advisory committee believes that in many cases parties or attorneys will take advantage of this new option to settle their cases without filing a trial de novo request. Therefore, based on the weight of the comments supporting this proposal, the PCLC and advisory committee recommend that the revised proposal be sponsored by the council without change.

### **Implementation Requirements, Costs, and Operational Impacts**

As indicated above, the committees concluded that these proposed changes would reduce costs for both the parties and the courts associated with preparing, filing, and processing unnecessary trial de novo requests and would allow courts to more accurately assess the impact of judicial arbitration on their caseloads. However, courts may experience some costs associated with reprogramming their case management systems to reflect these proposed statutory changes, particularly the increase from 30 to 60 days for entry of the judicial arbitration award as the judgment in a case.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal would promote effective practices for processing cases underlying Goal III, Modernization of Management and Administration (Goal III.B, Policy 1 and Objective 5).

### **Attachments**

1. Code Civ. Proc. §§ 1141.20 and 1141.23, at page 5
2. Chart of comments, at pages 6–7

Code of Civil Procedure sections 1141.20 and 1141.23 would be amended to read:

1 **Section 1141.20.** (a) An arbitration award shall be final unless a request for a de novo trial or a  
2 request for dismissal in the form required by the Judicial Council is filed within ~~30~~ 60 days after  
3 the date the arbitrator files the award with the court.

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5 (b) Any party may elect to have a de novo trial, by court or jury, both as to law and facts. Such  
6 trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the  
7 active list as it had prior to arbitration, or shall receive civil priority on the next setting calendar.

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10 **Section 1141.23.**

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12 The arbitration award shall be in writing, signed by the arbitrator and filed in the court in which  
13 the action is pending. If there is no request for a de novo trial or request for dismissal as  
14 provided under section 1141.20 and the award is not vacated, the award shall be entered in the  
15 judgment book in the amount of the award. Such award shall have the same force and effect as a  
16 judgment in any civil action or proceeding, except that it is not subject to appeal and it may not  
17 be attacked or set aside except as provided by Section 473, 1286.2, or Judicial Council rule.



**LEG10-06****Judicial Arbitration Statutes** (Code Civ. Proc. sections 1141.20 and 1141.23)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Committee on Administration of Justice State Bar of California San Francisco, California	A	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the proposed amendments to the judicial arbitration statutes, and supports the proposal. CAJ also notes that California Rule of Court 3.827(a) would need to be amended to conform to the proposed statutory amendments.	The committee plans to consider recommending corresponding changes to the Rules of Court if this legislative proposal moves forward.
2.	Committee on Alternative Dispute Resolution State Bar of California James R. Madison San Francisco, California	A	The State Bar of California's Committee on Alternative Dispute Resolution (ADR Committee) has reviewed and discussed the proposed amendments to the judicial arbitration statutes, and appreciates the opportunity to submit these comments. The ADR Committee supports this proposal. The Committee believes the revised proposal is a significant improvement over the original proposal, by providing that a request for dismissal, rather than a notice of settlement, stops the arbitration award from being entered as a judgment.	No response required.
3.	CompuLaw, LLC Eleni Apostolakis Los Angeles, California	A	While we agree with the proposed changes to CCP 1141.20(a), we note that CRC 3.826(a) conflicts with the proposal. CRC 3.826(a) currently states: "Within 30 days after the arbitration award is filed with the clerk of the court, a party may request a trial by filing with the clerk a request for trial, with proof of service of a copy upon all other parties appearing in the case."	The committee plans to consider recommending corresponding changes to the Rules of Court if this legislative proposal moves forward.
4.	Debbie Brasher	A	Now that I have read the codes and our local rules	No response required.

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	Management Analyst Superior Court of Stanislaus County		re: ADR, I understand the statute being recommended. I agree with the proposal to extend the time of Arbitrator Award to Entry of Judgment by thirty days to reduce the number of Trial de Novo requests. I'm not sure how many cases will be impacted by this legislation but we should be able to tell by the date requested since this is optional.	
5.	Joan Cotter Attorney San Mateo	A	No additional comment.	No response required.
6.	Donald J. Dowling Attorney San Bruno	N	I do not believe that extending the time period in which to request a trial de novo from 30 days to 60 days will act to encourage settlement following a judicial arbitration, nor will it reduce the number of trial de novo requests.	The committee believes that the proposed changes will encourage settlement and reduce requests for trials de novo that are currently being filed only to prevent the entry of the award as the judgment.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No additional comment.	No response required.