



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

Title	Agenda Item Type
Alternative Dispute Resolution: Judicial Arbitration	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.819 and 3.827	January 1, 2013
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	September 7, 2012
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the rules governing the judicial arbitration program be amended to (1) clarify that, in order to prevent entry of a judicial arbitration award as the judgment in a case, any request to dismiss the entire case must be signed by all parties to the case and any request to dismiss all parties to the arbitration must be signed by all those parties; and (2) provide that an arbitrator who has devoted a substantial amount of time to a case can request compensation even if the case settles without filing of an award.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2013,

1. Amend rule 3.819 of the California Rules of Court to:

- a. Provide that a court may, for good cause, authorize payment of an arbitrator who devoted a substantial amount of time to any case assigned to judicial arbitration that was settled without an award being filed, rather than only such cases that are settled without an arbitration hearing being held;
 - b. Provide that a case is considered settled for purposes of payment of the arbitrator when either a notice of settlement of the entire case or a request to dismiss either the entire case or all parties to the arbitration is filed; and
 - c. Replace the requirement that an arbitrator's fee statement include the date "a settlement" was filed with a requirement that the statement include the date any notice of settlement or any request for dismissal was filed.
2. Amend rule 3.827 to provide that, in order to prevent entry of a judicial arbitration award as the judgment in a case, any request to dismiss the entire case must be signed by all parties to the case and any request to dismiss all parties to the arbitration must be signed by all those parties.

The text of the proposed rules is attached at pages 7–8.

Previous Council Action

In December 2010, the Judicial Council approved a proposal to sponsor legislation to amend two of the statutes regarding the judicial arbitration program – Code of Civil Procedure sections 1141.20 and 1141.23. These amendments were intended to encourage settlement and reduce the number of trial de novo requests following judicial arbitration by (1) giving parties 60 days rather than 30 days, to file a request for a trial de novo, and (2) providing that filing a request for dismissal during this time period using the form required by the Judicial Council will also prevent entry of the arbitrator's award as the judgment of the court. The bill to make these statutory changes was enacted and these changes took effect on January 1, 2012.¹

The Judicial Council originally adopted rules for the judicial arbitration program effective July 1, 1976, and has since amended those rules on several occasions. Effective January 1, 2012, the Judicial Council amended rules 3.826 and 3.827 to conform to the amendments to the judicial arbitration statutes that also took effect on that date. Among other things, these rule amendments required that in order for the filing of a request for dismissal to prevent entry of the arbitrator's award as the judgment in a case, the request must be in the form of a fully completed *Request for Dismissal* (form CIV-110) and must include the signatures of all those whose consent is required for dismissal.

¹ Statutes of 2011, Chapter 49 (Senate Bill 731).

Rationale for Recommendation

California Code of Civil Procedure sections 1141–1141.31 establish judicial arbitration, a court-connected nonbinding arbitration program for civil cases valued at \$50,000 or less. Courts with 18 or more judges are required to have this program for unlimited civil cases, and it is optional for courts with fewer than 18 judges and for limited civil cases. (Code Civ. Proc., § 1141.11.) Rules 3.810–3.830 of the California Rules of Court establish procedures for the judicial arbitration program. Under these statutes and rules, parties have 60 days after the arbitrator files an award to file a request for a trial de novo or a request for dismissal; otherwise, the arbitrator’s award will be entered as the judgment of the court (See Code Civ. Proc., §§ 1141.20, 1141.23; Cal. Rules of Court, rules 3.826 and 3.827.) These statutes and rules also address the compensation of arbitrators who serve in this program.

This proposal is intended to (1) respond to identified concerns about who must sign a request for dismissal in order for it to prevent entry of an arbitration award as the judgment in the case, and (2) improve and clarify the procedures for payment of arbitrators in the judicial arbitration program.

Required signatures on requests for dismissal

As amended effective January 1, 2012, rule 8.327 provides, in part, that for the filing of a request for dismissal to prevent entry of a judicial arbitration award as the judgment in a case, the request must be in the form of a *Request for Dismissal* (form CIV-110) of the entire case or as to all parties to the arbitration, and the form must be fully completed and include the signatures of all those whose consent is required for dismissal.

Since the adoption of this provision, several individuals have noted that there is case law holding that after a judicial arbitration award has been filed, the plaintiff no longer has unilateral authority to voluntarily dismiss a complaint under Code of Civil Procedure section 581(b)(1). This code section provides, in relevant part, that “[a]n action may be dismissed . . . [w]ith or without prejudice, upon written request of the plaintiff to the clerk, . . . *at any time before the actual commencement of trial.*” (Italics added.) Case law has held that a judicial arbitration is viewed as a trial on the merits for purposes of section 581(b)(1) and therefore that unilateral dismissal under this section is not available once a judicial arbitration award has been filed (see *Lee v. Kwong* (2011) 193 Cal.App.4th 1275; *Kelley v. Bredelis* (1996) 45 Cal.App.4th 1819 and *Herbert Hawkins Realtors, Inc. v. Milheiser* (1983) 140 Cal.App.3d 334).

Code of Civil Procedure section 581(b)(2) also provides, however, that an action may be dismissed “[w]ith or without prejudice, by any party upon the written consent of all other parties.” Thus, with the consent of all parties, a case may be voluntarily dismissed even after the filing of a judicial arbitration award. To make it clearer that rule 8.327 is not intended to imply that the plaintiff may unilaterally dismiss a case after a judicial arbitration award has been filed,

this proposal amends rule 3.827 to specifically require that, for the filing of a *Request for Dismissal* to prevent entry of the arbitration award as the judgment in the case, any request to dismiss the entire case must be signed by all parties to the case and any request to dismiss all parties to the arbitration must be signed by all those parties.

Arbitrators' fees

Rule 3.819 currently provides that, with certain exceptions, an arbitrator in the judicial arbitration program may not be paid unless the arbitrator's award has been timely filed or a notice of settlement has been filed. However, this rule also currently allows a court, for good cause, to compensate an arbitrator who has devoted a substantial amount of time to a case that was settled without a hearing.

While this gives courts discretion to pay arbitrators if a case assigned to arbitration is settled before an arbitration hearing is held, it does not specifically address situations where a settlement is reached after an arbitration hearing but before an arbitration award is filed. To encompass these situations, this proposal amends rule 3.819(b) to provide more broadly that an arbitrator can request compensation if the arbitrator devoted a substantial amount of time to a case that was settled without a hearing or without filing of an award. In addition, the reference to payment after filing of a notice of settlement would be moved from subdivision (a) to subdivision (b) and would be expanded to include situations where a request for dismissal of the entire case or as to all parties to the arbitration is filed.

The committee is also proposing amendments rule 3.819(c), which addresses the contents of arbitrators' fee statements. Currently this provision requires that the statement include the date "a settlement" was filed. To make this provision clearer, this language would be replaced with a requirement that the statement include the date any "notice of settlement" or any request for dismissal was filed.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated for public comment between April 17 and June 20, 2012, as part of the regular spring 2012 comment cycle. Eight individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, but one of these also suggested that the committee consider changes to a related form, and two agreed with the proposal if modified. The full text of the comments received and the committee's responses are set out in the comment chart attached at pages 9–14. The main substantive comments and the committee's responses are also discussed below.

As circulated for public comment, this proposal would have eliminated the provision in subdivision (a) of rule 3.819 which indicates that an arbitrator may be paid after the filing of a

notice of settlement. One commentator suggested that this provision should not be eliminated because it provides guidance regarding the timing of such payments. The committee generally agreed with this comment. However, rather than keeping this provision in subdivision (a) of rule 3.819, the committee concluded that it is most appropriately placed in subdivision (b), which addresses payment of an arbitrator when a case is settled without a hearing or without an award being filed. Because the filing of a request for dismissal may also signal that a case has been settled, the committee recommends that subdivision (b) specify that the filing of either a notice of settlement of the entire case or a request for dismissal of the entire case or as to all parties to the arbitration signals that a case has been settled for purposes of payment of the arbitrator.

One commentator indicated that these proposed amendments will require some changes in the court's forms and case management systems and that six months' lead time for the implementation of these changes would therefore be preferred. However, because of the urgency of clarifying that rule 8.327 is not intended to authorize the plaintiff to unilaterally dismiss a case after a judicial arbitration award has been filed, the committee recommends that these amendments become effective January 1, 2013.

Alternatives

In addition to the alternatives considered in connection with the public comments, the committee considered not recommending any amendments to the judicial arbitration rules at this time. The committee concluded, however, that it was important to quickly seek the amendments to rule 8.327 to clarify that it does not authorize the plaintiff to unilaterally dismiss a case after a judicial arbitration award has been filed.

Implementation Requirements, Costs, and Operational Impacts

This proposal may require some changes in current trial court procedures relating to judicial arbitration and in the procedures followed by arbitrators. This may require some additional training for both trial court staff and the arbitrators on courts' judicial arbitration panels. There should be only small, one-time costs associated with these changes and this training. In addition, the proposed change to rule 3.827 should eliminate potential confusion about who must sign requests for dismissal in order to prevent entry of the arbitrator's award as the judgment. This should avoid costs associated with correcting problems stemming from requests for dismissal that do not contain needed signatures.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal will further the Judicial Council's Strategic Plan Goal: III. Modernization of management and administration and Operational Plan Objective: 5. Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.

Attachments

1. California Rules of Court, rules 3.819 and 3.827, at pages 7–8
2. Comment chart, at pages 9–14

Rules 3.819 and 3.827 of the California Rules of Court are amended, effective January 1, 2013, to read:

Title 3. Civil Rules

Division 8. Alternative Dispute Resolution

Chapter 2. Judicial Arbitration

Rule 3.819. Arbitrator's fees

(a) Filing of award ~~or notice of settlement~~ required

Except as provided in (b), ~~t~~The arbitrator's award must be timely filed with the clerk of the court under rule 3.825(b) ~~or a notice of settlement must have been filed~~ before a fee may be paid to the arbitrator.

(b) Exceptions for good cause

On the arbitrator's verified ex parte application, the court may for good cause authorize payment of a fee:

(1) If the arbitrator devoted a substantial amount of time to a case that was settled without a hearing or without an award being filed. For this purpose, a case is considered settled when one of the following is filed:

(A) A notice of settlement of the entire case, under rule 3.1385; or

(B) A Request for Dismissal (form CIV-110) of the entire case or as to all parties to the arbitration is filed; or

(2) If the award was not timely filed.

(c) Arbitrator's fee statement

The arbitrator's fee statement must be submitted to the administrator promptly upon the completion of the arbitrator's duties and must set forth the title and number of the cause arbitrated, the date of ~~the~~ any arbitration hearing, and the date the award ~~or, notice of~~ settlement, or request for dismissal was filed.

1 **Rule 3.827. Entry of award as judgment**

2
3 **(a) Entry of award as judgment by clerk**

4
5 The clerk must enter the award as a judgment immediately upon the expiration of 60 days
6 after the award is filed if no party has, during that period, served and filed either:

7
8 (1) A request for trial as provided in these rules; or

9
10 (2) A *Request for Dismissal* (form CIV-110) of the entire case or as to all parties to the
11 arbitration. The *Request for Dismissal* must be fully completed ~~and~~. If the request is
12 for dismissal of the entire case, it must include the signatures of all parties ~~those~~
13 whose consent is required for dismissal. If the request is for dismissal as to all parties
14 to the arbitration, it must include the signatures of all those parties.

15
16 **(b)–(c) * * ***

17

18

SPR12-01**Alternative Dispute Resolution: Judicial Arbitration** (amend Cal. Rules of Court, rules 3.819 and 3.827)

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

	Commentator	Position	Comment	Committee Response
1.	ADR Committee State Bar of California By: John S. Warnlof, Chair	A	The State Bar of California’s Committee on Alternative Dispute Resolution (ADR Committee) support the amendments that are proposed, and believes that they appropriately address the stated purposes of (i) improving and clarifying the procedure for payment of arbitrators in the judicial arbitration program; and (ii) clarifying who must sign a request for dismissal in order to prevent entry of an arbitration award as the judgment in the case. We also believe the proposed amendments will serve to lessen the burden on the courts by requiring the parties to obtain the required signatures on a Request for Dismissal, thereby avoiding an expenditure of resources relating to requests that are not properly completed.	The committee appreciates this input.
2.	Civil Division Managers Superior Court of Orange County By: Erin Rigby, Staff Analyst	A	The advisory committee should consider adding a check box to the top of the Request for Dismissal (form CIV-110) [] Dismissal After Arbitration Hearing and add a notation under section 3 to reference the signature requirements under CRC 3.827. Response to the Request for Specific Comments: <i>What are the implementation requirements for courts?</i> <ul style="list-style-type: none"> • Minimal training of staff is expected. There would be no impact to our case management system. • Information regarding the new changes of CRC 3.827 will be added to the our Notice of 	The committee appreciates this suggestion. However, the committee previously considered including similar changes to form CIV-110 in the proposal that was circulated for public comment and decided against proposing these changes at this time. The committee appreciates this input.

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			<p>Appointment of Arbitrator regarding the requirement for all parties to sign the Request for Dismissal form. Since the notice is a Word template, there will be no additional cost.</p> <p><i>Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <ul style="list-style-type: none"> • Answer is yes. 	The committee appreciates this input.
3.	Committee on the Administration of Justice State Bar of California, By: Saul Bercovitch Legislative Counsel	N/I	<p>CAJ supports the proposed changes as they clarify the process and address issues that have arisen because of the recently enacted amendments to the judicial arbitration statutes and rules. The proposal appropriately addresses the stated purpose.</p> <p>CAJ believes there is one issue that should be addressed concerning the Request for Dismissal. The rule requires use of Judicial Council form CIV-110. However, if all parties must sign and there are multiple parties to a case, the form only provides two signature lines. The rule or form should note that additional signatures can be provided through an attachment. There is a blank Judicial Council form that can be used for this purpose.</p>	The committee appreciates this suggestion. However, the committee previously considered including changes to form CIV-110 in the proposal that was circulated for public comment and decided against proposing these changes at this time.
4.	Long Beach Police Department By: Ed Ivora Acting Administrator	A	No specific comment.	The committee appreciates this input.
5.	Orange County Bar Association By: Dimetria Jackson, President	AM	Rule 3.819(a) proposed deletion of the phrase, "... or a notice of settlement must have been filed	The committee appreciates this input. However, rather than keeping this provision in subdivision

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			<p>..."</p> <p>Even with the proposed modification to Rule 3.819(b), it is believed that this phrase is still necessary to trigger payment where no award is filed. Subdivision (a) is understood to set the time, or circumstances after which, payment may be made. Subdivision (b), with its exceptions to (a), sets forth the conditions which allow a fee to be paid.</p> <p>Rule 3.819(b) proposed deletion of the phrase "... a hearing ..."</p> <p>It is believed that this phrase should remain to make clear that payment may be made even if no hearing was held. While the added phrase technically covers this situation, it may be interpreted to include only the circumstance where an award was anticipated or forthcoming, and imply that a hearing had occurred. To rely on the added phrase to "signal" that payment may issue even where no hearing had been held, may lead to speculation as to whether payment is proper or due. This potential problem is eliminated by including the two phrases, perhaps, as follows: "... without a hearing or, otherwise, an award having been filed; ..."</p>	<p>(a) of rule 3.819, the committee concluded that it is most appropriately placed in subdivision (b). With the proposed modifications, subdivision (a) articulates the general rule that an arbitrator is not to be paid until after an award is filed and rule 3.819(b) articulates the exceptions to that general rule, including when a case that was settled without an award being filed. The filing of a notice of settlement or a request for dismissal signals that a case may fall within subdivision (b)'s exception. The committee is therefore recommending that subdivision (b) specify that the filing of these documents signals that a case has been settled for purposes of this provision.</p> <p>The committee agrees with this comment and has modified the proposal consistent with this suggestion.</p>

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			<p>Rule 3.819(c). It is suggested that the word "any" be deleted when referring to "notice of settlement" and "request for dismissal," as it is unnecessary and inconsistent with the reference to "the award."</p>	<p>The committee agrees with this comment and has modified the proposal consistent with this suggestion.</p>
6.	Superior Court of Los Angeles County	AM	<p>1) With respect to the proposal to provide that an arbitrator can request compensation if the arbitrator devoted a substantial amount of time to a case that was settled without filing of an award, I offer the following comment. The committee's suggestion to delete the reference to notice of settlement from Rule 3.819(a) should include deleting it from the title: (a) Filing of award or notice of settlement required</p> <p>2) With respect to the proposal to clarify that in order to prevent entry of a judicial arbitration award as the judgment in a case, any request to dismiss the entire case must be signed by all parties to the case and any request to dismiss all parties to the arbitration must be signed by all those parties, I offer the following comments. Rule 3.827(a) (2) A <i>Request for Dismissal</i> (form CIV-110) of the entire case or as to all parties to the arbitration. The Request for Dismissal must be fully completed and. If the request is for dismissal of the entire case, it</p>	<p>The committee agrees with this comment and has modified the proposal consistent with this suggestion.</p> <p>The committee agrees with this comment and has modified the proposal consistent with this suggestion.</p>

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			<p>must include the signatures of all parties. those whose consent is required for dismissal. If the request is for dismissal is of as to all parties to the arbitration, it must include the signatures of all those parties.</p> <p>3) Request for Specific Comments</p> <p>Q - Will the proposal provide cost savings? If so please quantify. A - No.</p> <p>Q - What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system. A - LASC Local Rules would have to be amended to comply with these changes. At this time, the LASC does not pay arbitrators and therefore, we are not affected by the changes relating to rule 3.819. However, with respect to rule 3.827, the following should be considered: o Training for staff (judicial assistants, courtroom assistants, court services assistant IIIs): to identify the parties involved in the arbitration and determine if all signatures are present. Although the training time would be relatively short (1 hour), the time for processing would increase.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this input. The committee notes that the change to rule 3.827 is a clarification that is reflective of existing case law concerning requests for dismissal. It is therefore anticipated that most requests for dismissal in cases assigned to judicial arbitration will already comply with this law regarding necessary signatures and that the implementation requirements will generally not be extensive. The committee also notes that it previously considered including changes to <i>Request for Dismissal</i> (form CIV-110) in the proposal that was circulated for public comment and decided against proposing these changes at this time.</p>

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			<p>o The Policy and procedure for processing the Request for Dismissal would have to be revised.</p> <p>o The Request for Dismissal form would have to be modified to include instructions and signature lines.</p> <p>o The CMS should be modified to reflect/flag that the dismissal is postarbitration referral (this would be useful for statistical purposes).</p> <p>Q - Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>A – Changes in forms, case management systems, etc. will be needed. In such cases, typically six months’ lead time would be preferred.</p> <p>Q - How well would this proposal work in courts of different sizes?</p> <p>A - To answer this question, the size of the court needs to be considered as it relates to the number of arbitrations processed and whether arbitrators are paid. For example, if a smaller court is processing many arbitrations and the arbitrators are paid by the court, there would be different challenges than those faced by a larger court processing only a few arbitrations for which the arbitrators are not paid.</p>	<p>The committee appreciates this input. However, because of the urgency in avoiding confusion about whose signature is required on a request for dismissal that is sufficient to prevent entry of an arbitrator’s award as the judgment in a case, the committee is recommending that these changes become effective January 1, 2013.</p> <p>The committee appreciates this input.</p>

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7.	Superior Court of San Diego County By: Mike Roddy Executive Officer	A	No additional comments.	The committee appreciates this input.
8.	TCPJAC/CEAC Joint Rules Committee	A	<p>The TCPJAC/CEAC Joint Rules Working Group agrees with the proposed changes.</p> <p>Operational impacts identified by the working group:</p> <p>Increased Training Needs Requiring the Commitment of Staff Time and Court Resources</p> <p>The proposal may require changes in current trial court procedures relating to the processes followed by trial court staff and arbitrators (for courts with 18 or more judges.) Trial court staff may need training on new procedures to answer arbitrator requests for payment before an arbitrator award is filed.</p>	The committee appreciates this input.

