

Invitation to Comment

Title	Alternative Dispute Resolution: Judicial Arbitration Statutes (Code Civ. Proc. §§ 1141.20 and 1141.23)
Summary	These proposed statutory amendments are intended to encourage settlement and reduce the number of trial de novo requests following judicial arbitration by providing that filing a notice of settlement will prevent entry of the arbitrator's award as the judgment of the court.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Heather Anderson, ADR Subcommittee Counsel, 415-865-7691, heather.anderson@jud.ca.gov

Discussion

California Code of Civil Procedure sections 1141–1141.31 establish a court-connected, nonbinding arbitration program for civil cases valued at \$50,000 or less, known as judicial arbitration. 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). Under the judicial arbitration statutes, the parties have 30 days after the arbitrator files his or her award to request a trial de novo or the arbitrator's award will be entered as the judgment of the court (see Code Civ. Proc., §§ 1141.20 and 1141.23).

The current statutory structure appears to encourage parties to file requests for a trial de novo regardless of whether or not they are satisfied with the arbitrator's award. 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 credit-worthiness. Thus, even if a party might be 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.

This proposal would give parties an alternative to filing a trial de novo request by providing that the filing of notice of settlement within 30 days after the arbitrator's award is issued also stops the award from being entered as a judgment. This would allow parties who are satisfied with the arbitrator's 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.

The committee believes that this statutory change will encourage settlement following judicial arbitration and reduce the number of trial de novo requests. This, in turn, will reduce costs for both the parties and the courts associated with preparing, filing, and processing these trial de novo requests. Parties will be required to file notice of settlement, but this should not result in appreciable additional work since the California Rules of Court already provide that if a case is settled, the parties seeking affirmative relief must notify the court and any arbitrator of the settlement (see rules 3.829 and 3.1385). Rule 3.1385, relating to notice of settlement, also incorporates procedures for the dismissal of the case shortly after the filing of such a notice, so, like entry of the arbitrator's award as a judgment, filing a notice of settlement provides a path to disposition of the case.

The committee also believes this change will allow courts to more accurately assess the impact of judicial arbitration on their caseloads. By weeding out cases that can be settled in light of the arbitration award, courts should be better able to identify those cases in which the parties really want a trial after arbitration.

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

1 **Section 1141.20.**

2
3 (a) An arbitration award shall be final unless a request for a de novo trial or notice of
4 settlement in the form required by the Judicial Council is filed within 30 days after the
5 date the arbitrator files the award with the court.

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

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12
13 **Section 1141.23.**

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

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Item LEG10-04 Response Form

Title: **Alternative Dispute Resolution: Judicial Arbitration Statutes**

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the PolicyCoordination and Liaison Committee. All comments will become part of the public record of the council's action.