

**Invitation to Comment**

Title	Civil Law: Motion to Be Relieved as Counsel (amend Cal. Rules of Court, rule 3.1362)
Summary	Under different subdivisions, rule 3.1362 currently requires that an attorney seeking to be relieved as counsel serve the client with the moving papers and with a proposed order. The amended rule places all the service requirements in the same subdivision.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Anne M. Ronan, Case Management Subcommittee Counsel, 415-865-8933, anne.ronan@jud.ca.gov
Discussion	<p>The current rule of court concerning motions to be relieved as counsel requires that an attorney seeking to withdraw serve the notice, motion, and declaration on the client and all other parties who have appeared in the action. (Cal. Rules of Court, rule 3.1362(d), Service.) A different subdivision of that rule requires that the attorney prepare a proposed order and serve it on the client with the moving papers. (Rule 3.1362(e), Orders.)</p> <p>A private attorney has pointed out that the placement of the service requirement in separate subdivisions creates some confusion. The proposal moves the provision requiring service of the proposed order at the same time as the moving papers into the subdivision entitled “Service.” Hence, under the proposed revision, all documents to be served are listed in the same subdivision of the rule.</p>
	Attachment

Rule 3.1362 of the California Rules of Court would be amended by the Judicial Council, effective January 1, 2009, to read:

1 **Rule 3.1362. Motion to be relieved as counsel**

2  
3 (a)–(c) \* \* \*

4  
5 (d) **Service**

6  
7 The notice of motion and motion, ~~and the declaration,~~ and the proposed order must  
8 be served on the client and on all other parties who have appeared in the case. The  
9 notice may be by personal service or mail. If the notice is served on the client by  
10 mail under Code of Civil Procedure section 1013, it must be accompanied by a  
11 declaration stating facts showing that either:

- 12  
13 (1) The service address is the current residence or business address of the client;  
14 or  
15  
16 (2) The service address is the last known residence or business address of the  
17 client and the attorney has been unable to locate a more current address after  
18 making reasonable efforts to do so within 30 days before the filing of the  
19 motion to be relieved.

20  
21 As used in this rule, “current” means that the address was confirmed within 30 days  
22 before the filing of the motion to be relieved. Merely demonstrating that the notice  
23 was sent to the client’s last known address and was not returned is not, by itself,  
24 sufficient to demonstrate that the address is current. If the service is by mail, Code  
25 of Civil Procedure section 1011(b) applies.

26  
27 (e) **Order**

28  
29 The proposed order relieving counsel must be prepared on the *Order Granting*  
30 *Attorney’s Motion to Be Relieved as Counsel—Civil* (form MC-053) and must be  
31 lodged with the court ~~and served on the client~~ with the moving papers. The order  
32 must specify all hearing dates scheduled in the action or proceeding, including the  
33 date of trial, if known. If no hearing date is presently scheduled, the court may set  
34 one and specify the date in the order. After the order is signed, a copy of the signed  
35 order must be served on the client and on all parties that have appeared in the case.  
36 The court may delay the effective date of the order relieving counsel until proof of  
37 service of a copy of the signed order on the client has been filed with the court.

## Item SPR08-12 Response Form

**Title:** **Civil: Motion to Be Relieved as Counsel** (amend Cal. Rules or Court, rule 3.1362)

- 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 written on this form, prepared in a letter format, or submitted online. 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.

**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 20, 2008
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*Circulation for comment does not imply endorsement by the Judicial Council  
or the Rules and Projects Committee.  
All comments will become part of the public record of the council's action.*