



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

Title	Agenda Item Type
Judicial Council-sponsored Legislation (Criminal Procedure): Dismissals in the Interests of Justice	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 1385(a)	December 14, 2010
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Marvin R. Baxter, Chair Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	October 29, 2010
	Contact
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Executive Summary

The Policy Coordination and Liaison Committee (PCLC) and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1385(a) to authorize trial courts to state the reasons for a dismissal on the record as an alternative to setting forth the reasons in an order entered upon the minutes. The proposal is designed to relieve trial courts of an unnecessary mandate and eliminate extraneous proceedings resulting from automatic reversals for failure to set forth the reasons in the minutes, as required by the current statute.

Recommendation

The PCLC and the advisory committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1385(a) to require that the reasons for dismissal be set forth either on the record or in an order entered upon the minutes.

The text of the proposed amendment is attached at page 4.

Previous Council Action

There is no previous Judicial Council action to report.

Rationale for Recommendation

Background

Subdivision (a) of Penal Code section 1385 generally authorizes courts to dismiss actions in the “furtherance of justice” and requires that the reasons for dismissal be “set forth in an order entered upon the minutes.” The requirement that the reasons for dismissal be entered upon the minutes serves two primary purposes. First, the requirement promotes judicial accountability by requiring trial courts to explain why such a “great power” was exercised. (*People v. Beasley* (1970) 5 Cal.App.3d 617, 637.) Second, the requirement facilitates appellate review of the reasons for dismissal. (*People v. Superior Court* (1996) 13 Cal.4th 497, 531.)

In addition, the Supreme Court recently held that, based on the language of the current statute, the requirement is mandatory, and failure to set forth the reasons for dismissal in writing in the minutes is not harmless error, even when the reasons for dismissal appear in the transcript of the oral proceedings. (*People v. Bonnetta* (2009) 46 Cal.4th 143.)

Purpose

This proposal authorizes trial courts to state the reasons for dismissal on the record as an alternative to setting forth the reasons in an order entered upon the minutes as required by the current statute. As explained below, the proposed amendment would (1) satisfy the underlying purposes of the current statute, (2) relieve trial courts of an unnecessary mandate, and (3) eliminate extraneous proceedings that result from automatic reversals for failure to comply with the current requirement.

Authorizing trial courts to set forth the reasons for dismissal either on the record or in the minutes would satisfy the goals of judicial accountability and effective appellate review because both the record and the minutes are public and may be examined by both the public and appellate courts.

As noted above, the current requirement is mandatory, even when the reasons for dismissal are separately set forth on the record and in transcripts. The mandatory nature of the current requirement occasionally results in automatic reversals, even though the spirit of the requirement is satisfied because the reasons are contained on the record and in transcripts. As a result, the current requirement leads to costly proceedings that would be unnecessary if courts were instead authorized to state the reasons for dismissal on the record. The proposal would relieve trial courts of an unnecessary mandate and eliminate costs associated with automatic reversals.

In addition, stating the reasons for dismissal on the record is effective because, as a practical matter, there are often multiple reasons not easily summarized in the minutes, which are typically a clerk’s interpretation of the proceedings and one step removed from what was actually stated by the court.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment during the spring 2010 cycle. Nine comments were received. Of those, five agreed with the proposal, two agreed with the proposal if modified, and two disagreed. A chart of comments received and the advisory committee's responses are attached at pages 5–8.

As originally circulated, the proposal would have required courts to set forth the reasons for dismissal “on the record or, if requested by any party, in an order entered upon the minutes.” As such, the original proposal limited the court's ability to set forth the reasons in the minutes, on request by a party.

To address concerns expressed by commentators that some courts order dismissals without an oral record of the proceedings or in the absence of court reporters, the original proposal was modified to provide courts with discretion to decide whether to state the reasons on the record or set forth in an order entered upon the minutes.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and operational impacts would be limited to associated training of court staff and judicial officers.

Attachments

1. Penal Code section 1385, at page 4
2. Chart of comments, at pages 5–8

Section 1385(a) of the California Penal Code would be amended to read as follows:

1 **§ 1385.**

2

3 (a) The judge or magistrate may, either of his or her own motion or upon the application of
4 the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The
5 reasons for the dismissal must be stated on the record or set forth in an order entered upon the
6 minutes. No dismissal shall be made for any cause which would be ground of demurrer to the
7 accusatory pleading.

8

9 (b)–(c) ***

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Advisory Committee	A	No specific comment.	No response required.
2.	California Judges Association Jordan Posamentier Legislative Counsel	A	We support the proposed amendment to Penal Code section 1385, which would allow the court to state the reasons for the dismissal on the record as an alternative to entering the reasons on the minutes of the court. This change relieves the court of an unnecessary mandate and gives greater leeway to the court in fulfilling the requirement. The court reporter's transcript would be sufficient to document the reasons without the clerk being required to interpret the reasons as set forth by the judge.	No response required.
3.	Court of Appeal, Second Appellate District Katherine Lynn Managing Attorney	A	I agree with the proposed changes.	No response required.
4.	Gerald H. Genard Danville	AM	The change does not go far enough. The court should be required to state its reasoning for the record whenever a motion or request to dismiss in the interests of justice is made, even if the motion or request is denied. There are times when not dismissing a matter would be so manifest an injustice as to constitute egregious error and an abuse of discretion. Requiring the lower court to set forth	The committee declined this suggestion as unnecessary and beyond the scope of the proposal. Trial courts are not required to state reasons for refusing to dismiss under Penal Code section 1385. (<i>People v. McCowan</i> (1986) 182 Cal.App.3d 1, 17; <i>People v. Benevides</i> (1998) 64 Cal.App.4th 728, 734.)

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			reasons for a denial of a dismissal request forces the judge to give serious consideration to the issue and creates a record for the appellate court to consider without the need for blind deference to the lower court's action.	
5.	Alvina J. Hollensbe Court Executive Assistant Superior Court of San Bernardino County	N	Do not agree with the proposed changes. The proposed legislation is not clear enough for the requirements to be understood and met. There are mixed references to the record and the minutes. Does this apply to every dismissal in a criminal case on the court's own motion? For example, dismissals after a request for further action to the judge and a dismissal is ordered but no hearing is held? A dismissal on a case where the warrant is too old to prosecute and no hearing is held?	Yes, and to accommodate dismissals under Penal Code section 1385 where there is no oral record of the proceedings or court reporter, the committee modified the proposal to authorize courts to set forth the reasons either on the record or in writing in the minutes. As such, courts that dismiss without formal hearings would be authorized to set forth the reasons in an order entered upon the minutes.
6.	David Hughes Manager Superior Court of Orange County	AM	Not all courts, including [the Superior Court of Orange County], have a court reporter for misdemeanor and infraction matters. Further, the prosecutor in Orange County submits requests to dismiss actions in writing en masse rather than in open court. Therefore, it is recommended that the second sentence in PC 1385(a) be amended to read: "The reasons for the dismissal must be set forth on the record, or if there is no court reporter, or if requested by any party,	Please see response to comment 5.

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			in an order entered upon the minutes.”	
7.	Orange County Bar Association Lei Lei Wang Ekvall President	N	No reason to change [or] modify this section. If amended it would require misdemeanor courts to order a court reporter so that a transcript could be produced. These courts are not staffed with court reporters. Additionally, this requirement would create a chilling effect and judges might be less likely to use 1385.	Please see response to comment 5.
8.	Hon. Craig Riemer Superior Court of Riverside County	A	I strongly support this proposed statutory amendment. The current statute results in senseless appeals, as I know from personal experience. Following a trial in which the jury reached a guilty verdict as to one misdemeanor count (petty theft) but hung on a second misdemeanor count (2nd degree burglary), the People announced an intention to retry the defendant on the second count. I dismissed the case. The People appealed. The dismissal order was reversed solely because, although my reasons for dismissing the second count were stated on the record, they were not contained in the minutes. So, many months and many dollars later, I dismissed it again. A monumental waste of time, effort, and money to achieve no better record of reasons than had already been stated in open court and recorded by the court reporter.	Please see response to comment 5.

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	Commentator	Position	Comment	Committee Response
			However, it is my understanding that not all courts provide court reporters in misdemeanor proceedings. Thus, there may not always be a record of the oral statement of reasons. The proposal may want to take that possibility into account.	
9.	Superior Court of San Diego County Mike Roddy Court Executive Officer	A	No specific comment.	No response required.