

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT  
SPR11-17

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Title	Action Requested
Civil Cases: Vexatious Litigants	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes Revise forms MC-700 and MC-701; approve forms MC-702, MC-703, and MC-704	Proposed Effective Date January 1, 2012
Proposed by Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Contact Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov
Trial Court Presiding Judges Advisory Committee Hon. Kevin A. Enright, Chair	

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## Summary

Pending legislation sponsored by the Judicial Council, Senate Bill 731, would, effective January 1, 2012, amend Code of Civil Procedure section 391.7, a statute pertaining to the filing of new litigation by a vexatious litigant, and add Code of Civil Procedure section 391.8 to provide procedures for an application by a vexatious litigant to vacate a prefiling order and remove his or her name from the Judicial Council's list of vexatious litigants. This proposal is for revision of two existing Judicial Council forms and the approval of three new forms to implement the legislation and make other needed changes.<sup>1</sup>

## Discussion

### **Prefiling Order—Vexatious Litigant (form MC-700)**

This form is the order that is filed after a judge determines, under Code of Civil Procedure section 391, that a person is a vexatious litigant and enters a prefiling order under section 391.7. The proposed revisions add “presiding justice” in item 3, consistent with legislation that would add “presiding justice” to section 391.7, and include stylistic changes.

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<sup>1</sup> If the legislation is not passed and signed by the Governor, two of the forms, MC-703 and MC-704, would be withdrawn.

### ***Request to File New Litigation by Vexatious Litigant (form MC-701)***

After a person is determined to be a vexatious litigant and placed on the Judicial Council's vexatious litigant list, he or she must file a *Request to File New Litigation by Vexatious Litigant* (form MC-701) with each proposed new litigation. Under Code of Civil Procedure section 391.7(b), the presiding judge will permit the filing of new litigation only if it appears to have merit and is not being filed for the purposes of harassment or delay.

This form would be revised to describe how a vexatious litigant can show that the new filing has merit. The current form simply asks the litigant to give reasons why the new filing has merit. The information provided is not always helpful and sometimes extensive documents are filed as attachments to the form. The revision would read, "*The new filing has merit because (provide a brief summary of the facts on which your claim is based, the harm you believe you have suffered or will suffer, and the remedy or resolution you are seeking):*" This proposed amendment is intended to give more guidance about what a vexatious litigant must show and focus on the claim and remedy sought. Though it probably will not result in eliminating all unnecessary information or documents, this change should improve the quality of the information that a judge uses to determine whether a lawsuit has merit.

### ***Order on Request to File New Litigation by Vexatious Litigant (form MC-702)***

This new form would consist of the order portion of *Request to File New Litigation by Vexatious Litigant* (form MC-701), which is currently at the end of that form. When a request and an order on that request are part of the same form, the form is usually placed in the court case file more than once—first when the request is made and later when it is granted or denied. It can be confusing to have different versions of the same form in the file and the advisory committee understands that court case management systems may not be set up to distinguish between different versions. Therefore, the existing dual-use form, *Request to File New Litigation by Vexatious Litigant* (form MC-701), would be split into two separate forms: one for the request and one for the order, which is proposed new *Order on Request to File New Litigation by Vexatious Litigant* (form MC-702).

### ***Application for Order to Vacate Prefiling Order and Remove Name from Judicial Council Vexatious Litigant List (form MC-703)***

This new form would be used by a vexatious litigant to ask to be removed from the list of vexatious litigants who must obtain prefiling approval. It states the criteria for removal that are in the proposed legislation that would create new Code of Civil Procedure section 391.8. A vexatious litigant would be required to demonstrate that his or her application is supported by a change in the facts (i.e., he or she no longer engages in the conduct that resulted in the vexatious litigant determination) and is necessitated by the ends of justice. To provide the court with additional information to make the determination, item 5 requires a list of every case filed in the last 10 years in which the vexatious litigant has been a plaintiff or cross-complainant, as well as the number of motions filed in each case. The Rules and Projects Committee believes that the

number of motions filed by a vexatious litigant is significant information for a judge deciding a vexatious litigant's application to be removed from the vexatious litigant list and is particularly interested in comments on this item. The form also includes a notice box that incorporates the provisions of new Code of Civil Procedure section 391.8, which limit a request to be removed from the vexatious litigant list to once every 12 months and require the request to be filed in the court that entered the prefiling order.

The form would have a space for a vexatious litigant to list the courts and cases in which prefiling orders were issued declaring him or her to be a vexatious litigant.<sup>2</sup> Although a vexatious litigant's status applies statewide and once a person is on the vexatious litigant list, it is not necessary for a court to determine, under Code of Civil Procedure section 391.7, that a person already declared a vexatious litigant in one California court is a vexatious litigant in another. Many vexatious litigants' names are on the list multiple times, however, and including space on the form (or attachment) to list all courts and cases in which prefiling orders were issued would recognize this.

***Order on Application to Vacate Prefiling Order and Remove Name from Judicial Council Vexatious Litigant List (form MC-704)***

This new form is an order to be used to grant or deny the vexatious litigant's request to be removed from the list. Like form MC-703, this form has space to list the courts and cases in which prefiling orders were issued declaring the applicant to be a vexatious litigant. It also would require that the order be sent to the Judicial Council so that the vexatious litigant's name will be removed from the list if the application is granted.

***Specific Comments Requested***

Comments are requested concerning item 5 on *Application for Order to Vacate Prefiling Order and Remove Name from Judicial Council Vexatious Litigant List* (form MC-703), which requires a vexatious litigant to list every case filed in the last 10 years in which the vexatious litigant has been a plaintiff or cross-complainant and the number of motions filed in each case.

**Attachments**

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<sup>2</sup> Form MC-703 has space for two courts and cases and a box to check to continue the list on an attachment if necessary.

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and Address):  <i>(To be completed only if a party is making the motion)</i></p> <p>ATTORNEY FOR (Name):</p> <p>TELEPHONE NO.:</p> <p>FAX NO.:</p> <p>E-MAIL ADDRESS:</p> <p><input type="checkbox"/> COURT OF APPEAL, APPELLATE DISTRICT, DIVISION  <input type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF          STREET ADDRESS:          MAILING ADDRESS:          CITY AND ZIP CODE:          BRANCH NAME:</p> <p>CASE NAME:</p> <p>PREFILING ORDER—VEXATIOUS LITIGANT</p>	<p>FOR COURT USE ONLY</p> <p><b>DRAFT</b></p> <p><b>Not approved by the Judicial Council.</b></p> <p>CASE NUMBER:</p>
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1. Name and address of each plaintiff or cross-complainant or other party subject to this prefiling order:

2. This prefiling order is entered pursuant to a motion made by  the court  party (name):

3. The person or persons identified in item 1 are prohibited from filing any new litigation in the courts of California without approval of the presiding justice or presiding judge of the court in which the action is to be filed.

4. The clerk is ordered to provide a copy of this order to the California Judicial Council by fax at 415-865-4329 or by mail at the address below.

Vexatious Litigant Prefiling Orders  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, California 94102

Date:



**JUDICIAL OFFICER**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.:

FAX NO.:

E-MAIL ADDRESS:

ATTORNEY FOR (Name):

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION  
 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PLAINTIFF/ PETITIONER:

DEFENDANT/ RESPONDENT:

OTHER:

**DRAFT****Not approved by the Judicial Council.**

**REQUEST TO FILE  
NEW LITIGATION BY VEXATIOUS LITIGANT**

CASE NUMBER:

Type of case:  Limited Civil  Unlimited Civil  Small Claims  
 Family Law  Probate  Other

1. I have been determined to be a vexatious litigant and must obtain prior court approval to file any new litigation in which I am not represented by an attorney. Filing new litigation means (1) commencing any civil action or proceeding, or (2) filing any petition, application, or motion (except a discovery motion) under the Family or Probate Codes.

2. I have attached to this request a copy of the document to be filed and I request approval from the presiding justice or presiding judge of the above court to file this document (*name of document*):

3. The new filing has merit because (*provide a brief summary of the facts on which your claim is based, the harm you believe you have suffered or will suffer, and the remedy or resolution you are seeking*):

4. The new filing is not being filed to harass or to cause a delay because (*give reasons*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

TELEPHONE NO.:

FAX NO.:

E-MAIL ADDRESS:

ATTORNEY FOR (Name):

COURT OF APPEAL, APPELLATE DISTRICT, DIVISION  
 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

PLAINTIFF/ PETITIONER:

DEFENDANT/ RESPONDENT:

OTHER:

**DRAFT****Not approved by the Judicial Council.**

CASE NUMBER:

**ORDER ON REQUEST TO FILE  
NEW LITIGATION BY VEXATIOUS LITIGANT**

Type of case:  Limited Civil  Unlimited Civil  Small Claims  
 Family Law  Probate  Other

**ORDER**

Approval to file the attached document is:

- a.  Granted
- b.  Denied
- c.  Other:

Attachment to order. Number of pages \_\_\_\_\_. \_\_\_\_\_

Date:

\_\_\_\_\_  
PRESIDING JUSTICE OR JUDGE

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and Address)::	FOR COURT USE ONLY
ATTORNEY FOR (Name): TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	<b>DRAFT</b>
<input type="checkbox"/> COURT OF APPEAL, APPELLATE DISTRICT, DIVISION <input checked="" type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<b>Not approved by the Judicial Council.</b>
PLAINTIFF/PETITIONER:	CASE NUMBER:
<b>APPLICATION FOR ORDER TO VACATE PREFILING ORDER AND REMOVE NAME FROM JUDICIAL COUNCIL VEXATIOUS LITIGANT LIST</b>	

**NOTICE:** This application must be filed in the court that entered the prefiling order, either in the action in which the prefiling order was entered or in conjunction with a request to the presiding justice or presiding judge to file new litigation under Code of Civil Procedure section 391.7. If you have made an application to vacate a prefiling order that was denied, you may not make another application to vacate in any California court until at least 12 months after the denial.

1. I have been determined to be a vexatious litigant under California Code of Civil Procedure section 391. This application requests that the court vacate its prefiling order and order my name removed from the statewide vexatious litigant list.
2. The prefiling order or orders were issued in the following case or cases (*list all*):

Court: \_\_\_\_\_

Court: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Case Number: \_\_\_\_\_

Date prefiling order entered: \_\_\_\_\_

Date prefiling order entered: \_\_\_\_\_

Continued on *Attachment* (form MC-025).

3. I request that the prefiling order be vacated under Code of Civil Procedure section 391.8. (*Describe below the material change in the facts on which the order was granted and how the ends of justice would be served by vacating the order.*)
4.  I have not made an application for an order to vacate a prefiling order in the last 12 months.
5. Attached (form MC-025) is a list of every case filed in the last 10 years in which I have been a plaintiff or cross-complainant and the number of motions I filed in each case. (*Include case name, case number, court in which filed, and date filed.*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(DATE)

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (Name): _____		<b>DRAFT</b>  <b>Not approved by the Judicial Council.</b>
<input type="checkbox"/> COURT OF APPEAL, APPELLATE DISTRICT, DIVISION <input type="checkbox"/> SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
PLAINTIFF/ PETITIONER:		CASE NUMBER:
<b>ORDER ON APPLICATION TO VACATE PREFILING ORDER AND REMOVE NAME FROM JUDICIAL COUNCIL VEXATIOUS LITIGANT LIST</b>		

Plaintiff/Petitioner \_\_\_\_\_ requests that this court vacate the prefiling order and remove the vexatious litigant's name from the statewide list in the following case or cases (*if more than one, list each separately*):

Court: \_\_\_\_\_

Court: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Case Number: \_\_\_\_\_

Date prefiling order entered: \_\_\_\_\_

Date prefiling order entered: \_\_\_\_\_

Continued on Attachment (form MC-025).

Granted

Denied

Date: \_\_\_\_\_

PRESIDING JUSTICE OR JUDGE

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The clerk is ordered to provide this order to the Judicial Council of California by fax at 415-865-4329 or by mail at the address below.

Vexatious Litigant Prefiling Orders  
 Judicial Council of California  
 Administrative Office of the Courts  
 455 Golden Gate Avenue  
 San Francisco, California 94102-3688

## **Item SPR11-17 Response Form**

**Title:** Civil Cases: Vexatious Litigants Forms (revise forms MC-700 and MC-701; approve MC-702, MC-703, and MC-704)

- 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.

Internet: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm)

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

**DEADLINE FOR COMMENT:** 5:00 p.m., Monday, June 20, 2011