

Invitation to Comment

Title	Class Actions: Entry of Judgment Following Final Approval of Settlement (amend Cal. Rules of Court, rules 3.769 and 3.770)
Summary	This proposal would amend the rules governing settlement and dismissal of class actions to provide that a court may not enter an order dismissing a class action if the court has entered judgment following final approval of a class settlement.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair
Staff	Susan R. McMullan, Complex Litigation Subcommittee Counsel 415-865-7990 susan.mcmullan@jud.ca.gov
Discussion	<p>Rule 3.769 of the California Rules of Court addresses court approval of class action settlements. Under subdivision (h) of that rule, after a court approves settlement and enters judgment, it is required to retain jurisdiction to enforce the terms of the judgment. Following final court approval of a class settlement and entry of judgment, in some cases parties have also sought entry of dismissal. There is no authority, however, for both entry of judgment following settlement with retention of jurisdiction to enforce the judgment, and entry of dismissal. In the circumstances of a class settlement, the entry of dismissal may be inconsistent with a judgment.</p> <p>Retention of jurisdiction to enforce a settlement in a non-class action case is governed by Code of Civil Procedure section 664.6. It provides that a court may retain jurisdiction to enforce the terms of a settlement if the parties stipulate to the settlement, either in writing or orally before the court, and ask the court to retain jurisdiction to enforce its terms while the case is still pending. The court may both retain jurisdiction to enforce the terms of the settlement and enter dismissal. (See <i>Wackeen v. Malis</i> (1992) 97 Cal. App. 4th 429 [“We construe the second sentence of section 664.6 to mean, and we so hold, that even though a settlement may call for a case to be dismissed, or the plaintiff may dismiss the suit of its own accord, the court may nevertheless retain jurisdiction to enforce the terms of the settlement, until such time as all of its terms have been performed by the parties, if the parties have requested this specific retention of jurisdiction.”].)</p> <p>Unlike a non-representative action, in a class action, because of the need to protect the absent class members who did not participate in</p>

settlement negotiations, the settlement terms are essentially merged into a judgment when the court approves the class settlement and it is not necessary in a class settlement for the parties to ask the court to retain jurisdiction to enforce the court-approved settlement terms. (Cal Rules of Court, rule 3.769(h) [“The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment.” (Italics added.)]) Moreover, a typical non-representative action does not require court approval of a settlement because all the parties to the settlement are before the court and their settlement may be enforced as any other private contractual agreement may be enforced.

The purpose of the requirements of court approval of a class settlement and court approval of the dismissal of a class action is to protect the interests of the class and its members. (See *La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 871; *In re Microsoft I-V Cases* (2006) 135 Cal. App.4th 706, 723 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal. App.4th 1794, 1800-1801).) A rule prohibiting concurrent entry of judgment following settlement with retention of jurisdiction, and entry of dismissal will advance this purpose. A settled class action may be disposed of without the entry of dismissal, making dismissal unnecessary.

Attachment

Rules 3.769 and 3.770 of the California Rules of Court would be amended, effective January 1, 2009, to read:

1 **Rule 3.769. Settlement of class actions**

2
3 (a)–(g) * * *

4
5 (h) **Judgment and retention of jurisdiction to enforce**

6
7 If the court approves the settlement agreement after the final approval
8 hearing, the court must make and enter judgment. The judgment must
9 include a provision for the retention of the court’s jurisdiction over the
10 parties to enforce the terms of the judgment. The court may not enter an
11 order dismissing the action at the same time as, or after, entry of
12 judgment.

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14
15 **Rule 3.770. Dismissal of class actions**

16
17 (a) **Court approval of dismissal**

18
19 A dismissal of an entire class action, or of any party or cause of action in a
20 class action, requires court approval. The court may not grant a request to
21 dismiss a class action if the court has entered judgment following final
22 approval of a settlement. Requests for dismissal must be accompanied by a
23 declaration setting forth the facts on which the party relies. The declaration
24 must clearly state whether consideration, direct or indirect, is being given for
25 the dismissal and must describe the consideration in detail.

26
27 (b)–(c) * * *

Item SPR08-30 Response Form

Title: **Class Actions: Entry of Judgment Following Final Approval of Settlement**
(amend Cal. Rules of Court, rules 3.769 and 3.770)

- 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.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*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.*