

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-01

Title	Action Requested
Alternative Dispute Resolution: Judicial Arbitration	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 3.817, 3.818, 3.819, 3.825, 3.826, 3.827, 3.829, and 3.1390	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Summary

This proposal would conform the rules relating to the judicial arbitration program to proposed statutory changes that are expected to take effect on January 1, 2012. In addition, this proposal would require parties in cases assigned to judicial arbitration or another court-connected alternative dispute resolution (ADR) program to serve the arbitrator or other ADR neutral with any notice of entry of dismissal and would specify the duties of an arbitrator in the judicial arbitration program when a notice of settlement or notice of entry of a dismissal is filed at various stages in the arbitration proceedings.

Discussion

California Code of Civil Procedure sections 1141–1141.31 establish the judicial arbitration program, a court-connected, nonbinding arbitration program for civil cases valued at \$50,000 or less. 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 current 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, 1141.23.) Last year, the Civil and Small Claims Advisory Committee recommended that the Judicial Council sponsor legislation to amend these statutes to encourage settlement and reduce the number of trial de novo requests following judicial arbitration by (1) giving parties 60, rather than 30, days to file a

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

request for a trial de novo; and (2) providing that filing a request for dismissal during this time period will also prevent entry of the arbitrator's award as the judgment of the court. The Judicial Council agreed to sponsor this legislation, a bill to make these statutory changes has been introduced,¹ and if enacted, will take effect on January 1, 2012.

Rules 3.810–3.830 of the California Rules of Court establish procedures for the judicial arbitration program. If the proposed legislation is enacted, these rules will need to be amended effective January 1, 2012, to reflect the amended statutes.² This proposal would amend the rules to reflect the anticipated new 60-day period for requesting a trial de novo and the new provision establishing that the filing of a request for dismissal will also prevent entry of the arbitrator's award as the judgment. In addition, this proposal would establish requirements for the form of a request for dismissal for this purpose.

In some cases, parties may settle or dismiss a case assigned to judicial arbitration or to another court-connected ADR program before the ADR process has been completed. It is helpful for ADR neutrals involved in these programs to be kept apprised of the status of cases in which they are serving. Rule 3.1385 already requires that a party serve a copy of any notice of settlement on any arbitrator or other court-connected ADR neutral involved in the case. The rules do not currently require, however, that parties serve such neutrals with copies of a notice of entry of dismissal. This proposal would fill that gap by requiring service of these documents on any arbitrator or other court-connected ADR neutral involved in the case.

Currently, the rules concerning the judicial arbitration program do not specify what, if anything, an arbitrator should do if he or she receives a notice of settlement or if the case is dismissed. This proposal would fill that gap by specifying the duties of these arbitrators when a notice of settlement or notice of entry of a dismissal is filed at various stages in the arbitration proceedings. Among other things, this proposal would provide that if a notice of settlement is filed before the arbitration hearing is held, the hearing must be scheduled after the deadline for the party to file a request for dismissal.³ This will prevent unnecessary arbitration hearings but also ensure that the case proceeds appropriately if a dismissal is not ultimately requested. In addition, because the dismissal of a case is a more reliable indicator that the case has ended than a notice of settlement, this proposal would change the current provision regarding the time when arbitrators may request compensation to provide that compensation can be requested either after the award has been filed or after notice of entry of dismissal has been filed, rather than after notice of settlement has been filed.

¹ Senate Bill 731, introduced February 11, 2011.

² If Senate Bill 731 is not enacted, no changes would be proposed to these rules.

³ Under rule 3.1385, a party who files a notice of settlement must generally file a request for dismissal no later than 45 days after filing the notice of settlement.

Rule 3.817, 3.818, 3.819, 3.825, 3.826, 3.827, 3.829 and 3.1390 of the California Rules of Court would be amended, effective January 1, 2012, to read:

1 **Title 3. Civil Rules**

2
3 **Division 8. Alternative Dispute Resolution**

4
5 **Chapter 2. Judicial Arbitration**

6
7 **Rule 3.817. Arbitration hearings; notice; when and where held**

8
9 **(a) Setting hearing; notice**

10
11 (1) Except as provided in (2), within 15 days after the appointment of the
12 arbitrator, the arbitrator must set the time, date, and place of the arbitration
13 hearing and notify each party and the administrator in writing of the time,
14 date, and place set.

15
16 (2) If, before a hearing has been set, the plaintiff files a notice of entry of
17 dismissal of the entire case or as to all parties to the arbitration, the arbitrator
18 must not set a hearing.

19
20 **(b) Date of hearing; limitations**

21
22 (1) Except upon the agreement of all parties and the arbitrator, the arbitration
23 hearing date must not be set:

24
25 ~~(1)(A)~~ Earlier than 30 days after the date the arbitrator sends the notice of the
26 hearing under (a); or

27
28 ~~(2)(B)~~ On Saturdays, Sundays, or legal holidays.

29
30 (2) If the plaintiff files a notice of settlement as required under rule 3.829, the
31 hearing must be set or, if already set, must be reset, for a date no earlier than
32 5 days after the date on which the party is required to file a request for
33 dismissal. If the plaintiff files a notice of entry of dismissal of the entire case
34 or as to all parties to the arbitration, the hearing must be canceled.

35
36 **(c) Hearing completion deadline**

37
38 Except as provided in (b)(2), the hearing must be scheduled so as to be completed
39 no later than 90 days from the date of the assignment of the case to the arbitrator,
40 including any time due to continuances granted under rule 3.818.

41
42 **(d) * * ***

43

1 **Rule 3.818. Continuances**

2
3 (a)–(b) * * *

4
5 (c) **Limitation on length of continuance**

6
7 An arbitration hearing must not be continued to a date later than ~~90 days after the~~
8 ~~assignment of the case to the arbitrator~~ the hearing completion deadlines specified
9 in rule 3.817(c), including any time due to continuances granted under this rule,
10 except by order of the court upon the motion of a party as provided in (b).
11

12
13 **Rule 3.819. Arbitrator’s fees**

14
15 (a) **Filing of award or notice of settlement required**

16
17 The arbitrator’s award must be timely filed with the clerk of the court under rule
18 3.825(b) or a notice of ~~settlement~~ entry of dismissal must have been filed before a
19 fee may be paid to the arbitrator.
20

21 (b) * * *

22
23 (c) **Arbitrator’s fee statement**

24
25 The arbitrator’s fee statement must be submitted to the administrator promptly
26 upon the completion of the arbitrator’s duties and must set forth the title and
27 number of the cause arbitrated, the date of the arbitration hearing, and the date the
28 award or ~~settlement~~ notice of entry of dismissal was filed.
29

30
31 **Rule 3.825. The award**

32
33 (a) * * *

34
35 (b) **Filing the award or amended award**

36
37 (1) *Time for filing the award*

38 .
39 (A) Except as provided in (B) and (C), within 10 days after the conclusion
40 of the arbitration hearing, the arbitrator must file the award with the
41 clerk, with proof of service on each party to the arbitration.

42
43 (B) On the arbitrator’s application in cases of unusual length or complexity,
44 the court may allow up to 20 additional days for the filing and service
45 of the award.
46

1 (C) If, before the award has been filed, the plaintiff files a notice of entry of
2 dismissal of the entire case or as to all parties to the arbitration, the
3 arbitrator must not file the award.
4

5 (2) * * *

6
7
8 **Rule 3.826. Trial after arbitration**

9
10 **(a) Request for trial; deadline**

11
12 Within ~~30~~ 60 days after the arbitration award is filed with the clerk of the court, a
13 party may request a trial by filing with the clerk a request for trial, with proof of
14 service of a copy upon all other parties appearing in the case. A request for trial
15 filed after the parties have been served with a copy of the award by the arbitrator,
16 but before the award has been filed with the clerk, is valid and timely filed. The ~~30~~
17 60-day period within which to request trial may not be extended.
18

19 **(b)–(d)** * * *

20
21
22 **Rule 3.827. Entry of award as judgment**

23
24 **(a) Entry of award as judgment by clerk**

25
26 The clerk must enter the award as a judgment immediately upon the expiration of
27 ~~30~~ 60 days after the award is filed if no party has, during that period, served and
28 filed either:

29
30 (1) A request for trial as provided in these rules; or

31
32 (2) A Request for Dismissal (form CIV-110) of the entire case or as to all parties
33 to the arbitration. The Request for Dismissal must be fully completed and
34 must include the signatures of all those whose consent is required for
35 dismissal.
36

37 **(b)–(c)** * * *

38
39
40 **Rule 3.829. Settlement of case**

41
42 **(a) Notice of settlement**

43
44 If a case is settled, each plaintiff or other party seeking affirmative relief must
45 notify serve notice of settlement on all parties and the arbitrator and the court file
46 that notice as required in rule 3.1385.

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(b) Notice of entry of dismissal

A party that files a notice of entry of dismissal must serve a copy of that notice on the arbitrator as required in rule 3.1390.

Division 13. Dismissal of Actions

Rule 3.1390. Service and filing of notice of entry of dismissal

A party that requests dismissal of an action must serve ~~on all parties and file~~ notice of entry of the dismissal on all parties and any arbitrator or other court-connected alternative dispute resolution (ADR) neutral involved in the case and file this notice.

Item SPR11-01 Response Form

Title: **Alternative Dispute Resolution: Judicial Arbitration** (amend Cal. Rules of Court, rules 3.817, 3.818, 3.819, 3.825, 3.826, 3.827, 3.829, and 3.139)

- 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., Monday, June 20, 2011

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.