INVITATION TO COMMENT
SPR12-12

Title
Civil Practice and Procedure: Notice of
Conditional Settlement

Proposed Rules, Forms, Standards, or Statutes
Amend Cal. Rules of Court, rule 3.1385

Proposed by
Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair

Action Requested
Review and submit comments by June 15, 2012

Proposed Effective Date
January 1, 2013

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Executive Summary and Origin

If a settlement agreement conditions the dismissal of a case on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, rule 3.1385 requires that a notice of conditional settlement specify the date by which the dismissal is to be filed. The proposed amendment would provide that hearings and other proceedings requiring the appearance of a party be vacated during the time between the filing of the notice of conditional settlement and the specified dismissal date. The Civil and Small Claims Advisory Committee's Collections Cases Working Group, which is made up of advisory committee members and outside consultants, proposed this rule amendment at a working group meeting in May 2011. Attorney members of the working group reported that because court proceedings requiring the appearance of parties are not vacated, they often have to make unnecessary appearances after a case has been settled but before all installment payments have been made and before a request for dismissal has been filed.

The Proposal

Rule 3.1385 imposes a duty on the plaintiff or other party seeking affirmative relief to immediately file written notice of settlement when an entire case is settled. Except when the dismissal is conditional or involves the compromise of a claim of a minor or disabled person, the plaintiff must serve and file a request for dismissal of the entire case within 45 days after the date of settlement. If the settlement agreement conditions dismissal on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, the notice of conditional settlement must specify the date by which the dismissal is to be filed. One type of conditional settlement, the terms of which will not be completed within this time, is a settlement paid in installment payments. Such a conditional settlement may not be completed for several years. There is no need during that time for the parties to appear in court for case management conferences or other activities.

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.

Attorney members of the working group reported, however, that often they receive notices from courts setting case management conferences or orders to show cause during the period between the filing of the notice of conditional settlement and the dismissal date. As a result, parties and courts incur the time and expense of unnecessary court appearances. This proposal is being circulated at this time because it is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public.

Vacating hearing dates following notice of conditional settlement. This proposal would address the problem of unnecessary court appearances by amending rule 3.1385(c) to provide that on the filing of a notice of conditional settlement, the court must vacate all hearings and other proceedings requiring the appearance of a party and not set any such proceeding until at least 45 days after the dismissal date specified in the notice of conditional settlement. A party could, however, request a hearing if needed. The rule would retain the existing language (now in new subdivision (c)(2)) that authorizes the court to dismiss the case if plaintiff has not filed a request for dismissal within 45 days after the dismissal date specified in the notice.

The advisory committee noted in its discussion that vacating hearing and other appearance dates would not affect remaining defendants because the rule applies only to settlement of the entire case and thus there would be no remaining defendants. (See title of rule: "Duty to notify court and others of settlement of entire case.") To ensure that this is clear, the advisory committee added the words "of the entire case" to proposed new subdivision (c)(1).

Adding the words "including payment in installments payments." The rule would also be amended to refer specifically to "payment in installment payments," to clarify that it applies to this type of conditional settlement. This clarification appears in proposed new subdivision (c)(1).

Exemption from case disposition time goals. Another amendment would note that a case in which a notice of conditional settlement has been filed is exempt from the case disposition time goals of rule 3.714(b), which provides that 100 percent of civil cases are to be disposed of within 24 months. Under standard 2.2(n)(1)(A) of the Standards of Judicial Administration, the filing of a notice of conditional settlement in a case under rule 3.1385 excludes that case from case disposition time goals.

Alternatives considered

The committee could leave the rule unchanged or recommend a more limited amendment that adds "payment in installment payments" *or* requires hearings to be vacated in the situation of a conditional settlement, but not both. The proposed amendments, however, are more likely to address the problem of unnecessary appearances when a settlement agreement includes installment payments.

The advisory committee considered having a two-year limit on the period following the filing of the notice of conditional settlement. If a request for dismissal were not filed within 45 days after the two-year period, a court could set hearing and other appearance dates or dismiss the case. However, there is case law contrary to such a limit. *Interinsurance Exchange of the Automobile Club of Southern California v. Faura* (1996) 44 Cal. App. 4th 839, 844 interprets rule 3.1385

(under the previous rule number). The case concerned a settlement in installment payments that provided for dismissal of the case after the final installment payment in six years' time. The court held that it was an abuse of discretion for the trial court to schedule a status conference after notice of settlement was filed, and to dismiss the case for the parties' failure to appear, before the expiration of the six-year period. The court interpreted the conditional settlement rule as containing no time limit on dismissals. Concerning the rule, the court stated, "Rule [3.1385(c)] reflects a pragmatic approach to conditional settlements. The case has been concluded and unless there is a breach of the settlement agreement, there is no further need for an appearance by the parties or for the court to monitor the file." (*Id*., at p. 843.)

Although the advisory committee could propose that the amended rule set a two-year limit on the period following the filing of the notice of conditional settlement—effectively overruling *Interinsurance Exchange, supra,* and changing the law—the committee does not recommend doing so. Some conditional settlements, especially those featuring payment in installments, will not be completed in two years. Allowing more time to effectuate the settlement agreement better addresses the problem of unnecessary court appearances after a case has been settled but before all installment payments have been made and before a request for dismissal has been filed.

The advisory committee also considered amending the rule to provide that the five-year rule—the time for bringing a case to trial specified in Code of Civil Procedure section 583.310—is not extended by the filing of a notice of conditional settlement. Again, case law is to the contrary. "The computation of the five-year period now specifically excludes the time during which bringing the action to trial was impossible, impracticable, or futile. (§ 583.340(c).)." *Canal Street, Ltd. v. Sorich* (2000) 77 Cal.App.4th 602, 608.) "[T]he time during which a settlement agreement is in effect tolls the five-year period, for the reason that attempting to bring an action to trial when all issues have been resolved through settlement would be futile." (*Ibid.*) The rationale for not requiring a conditionally settled case to be brought to trial is similar to that stated in *Canal Stree*t, *supra,* though that case did not specifically address a conditional settlement.

Implementation Requirements, Costs, and Operational Impacts
This proposal is expected to result in long-term cost savings and time savings for courts and litigants, because unnecessary court appearances in conditionally settled cases will be eliminated. The extent to which courts currently hold case management conferences and other appearances in these cases is not known. After a case is conditionally settled, a court should not be holding case management conferences or other proceedings requiring the appearance of parties. But based on reports to the working group that were communicated to the advisory committee, this happens frequently in some courts, particularly in consumer collections cases in which defendants agree to installment payments.

To determine the implementation requirements, costs, and operational impacts, the advisory committee sought information about how courts would implement this proposal and whether it would require significant modifications to case management systems. One advisory committee member, the director of civil operations in a large court, stated that in her court it would be a one-step process to enter the dismissal date (or the date 45 days after the dismissal date) in the case management system, where the date can be set for up to nine years in the future. The court services

manager in another large court explained that when a notice of conditional settlement is currently filed, the court no longer continues to actively manage the case; the case is set for a compliance hearing approximately 45 days after the dismissal date stated in the notice. He stated that it would impose no new or additional burdens on his court to require—as under the amended rule—that a court vacate all hearings and other proceedings requiring the appearance of a party until 45 days after the dismissal date specified in the notice.

For the 15 courts using the Sustain Justice Edition (SJE) case management system, a slight modification would be needed to provide that all hearings are vacated. According to a consultant familiar with the SJE case management system, this is a simple change, and most courts already vacate future events when a conditional settlement is filed.

Request for Comments

In addition to comments on the proposal as a whole, the advisory committee and working group are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

- Are there alternatives to address the issue of unnecessary court appearances in a conditionally settled case that would be preferable to the proposed rule amendment?

- Should the proposed amendment allow a court to set a hearing or other proceeding requiring the appearance of a party on an infrequent basis such as once every year or two years during the period between the notice of conditional settlement and the specified dismissal date?

- Should the proposed amendment require a court to exempt from the case disposition time goals of rule 3.714 any case in which a notice of conditional settlement has been filed?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so, please quantify.

- What are the implementation requirements for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.

- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

- How well would this proposal work in courts of different sizes?

Attachments and Links
Cal. Rules of Court, rule 3.1385

Rule 3.1385 of the California Rules of Court would be amended, effective January 1, 2013, to read:

1 **Rule 3.1385. Duty to notify court and others of settlement of entire case**
2
3 **(a)–(b)** * * *
4
5 **(c)** **Conditional settlement**
6
7   (1) *Notice*
8
9   If the settlement agreement conditions dismissal of the entire case on the
10   satisfactory completion of specified terms that are not to be performed within
11   45 days of the settlement, including payment in installment payments, the
12   notice of conditional settlement served and filed by each plaintiff or other
13   party seeking affirmative relief must specify the date by which the dismissal
14   is to be filed. ~~If the plaintiff or other party required to serve and file a request~~
15   ~~for dismissal within 45 days after the dismissal date specified in the notice~~
16   ~~does not do so, the court must dismiss the entire case unless good cause is~~
17   ~~shown why the case should not be dismissed.~~
18
19   (2) *Dismissal*
20
21   If the plaintiff or other party required to serve and file a request for dismissal
22   within 45 days after the dismissal date specified in the notice does not do so,
23   the court must dismiss the entire case unless good cause is shown why the
24   case should not be dismissed.
25
26   (3) *Hearings vacated*
27
28   On the filing of the notice of conditional settlement, the court must vacate all
29   hearings and other proceedings requiring the appearance of a party and may
30   not set any hearing or other proceeding requiring the appearance of a party
31   earlier than 45 days after the dismissal date specified in the notice, unless
32   requested by a party.
33
34   (4) *Case disposition time*
35
36   Under standard 2.2(n)(1)(A), the filing of a notice of conditional settlement
37   removes the case from the computation of time used to determine case
38   disposition time.
39
40 **(d)–(e)** * * *
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