

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**
455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Lee Smalley Edmon, Chair
Case Management Subcommittee
Hon. Frank Roesch, Chair
Anne M. Ronan, Committee Counsel, 415-865-8933
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DATE: August 8, 2008

SUBJECT: Civil Rules: Motion to Be Relieved as Counsel (amend Cal. Rules of Court, rule 3.1362) (Action Required)

Issue Statement

Under different subdivisions, California Rules of Court, rule 3.1362 currently requires that an attorney seeking to be relieved as counsel serve the client with the moving papers and with a proposed order. The amended rule would place all the service requirements into the same subdivision.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2009, amend California Rules of Court, rule 3.1362 so that all service requirements concerning a motion to be relieved as counsel are included in a single subdivision of the rule.

The text of revised rule 3.1362 is attached at page 3.

Rationale for Recommendation

The current rule of court concerning motions to be relieved as counsel requires that an attorney seeking to withdraw serve the notice, motion, and declaration on the client and all other parties who have appeared in the action. (Cal. Rules of Court, rule 3.1362(d), Service.) A different subdivision of the rule requires that the attorney prepare a proposed order on Judicial Council form MC-053, and serve it on the client with the moving papers. (Cal. Rules of Court, rule 3.1362(e).)

The placement of the service requirements in separate subdivisions creates some confusion. This proposal moves the provision requiring service of the proposed order at the same time as the moving papers into the subdivision entitled “Service.” Hence, under the revised rule, all documents to be served are listed in the same subdivision of the rule.

Alternative Actions Considered

The committee considered but rejected the alternative of eliminating the requirement that the proposed order be served on the client prior to the hearing. The service of the proposed order makes clear to the litigant what will happen if the motion is granted. In light of the fact that counsel is, for whatever reason, trying to end the relationship with the litigant, the litigant can no longer rely on counsel’s fully informing him or her of the potential impact of the motion. Thus, service of the proposed order prior to the hearing is appropriate.

Comments From Interested Parties

The proposed amendments were circulated as part of the spring 2008 comments cycle. Ten individuals or organizations submitted comments, all of which agreed with the proposal.¹ The Committee on Administration of Justice of the State Bar raised a question regarding a part of the rule that was not addressed in this proposal, which will be considered by the committee in a future rules cycle. (See Comment Chart at comment 3, page 4.)

Implementation Requirements and Costs

The proposed amendments will not require any implementation or impose any additional costs on the courts.

Attachments

¹ A chart summarizing the comments and the committee’s responses thereto is attached at pages 4–5.

Rule 3.1362 of the California Rules of Court is amended by the Judicial Council, effective January 1, 2008, to read:

1 **Rule 3.1362. Motion to be relieved as counsel**

2
3 **(a)–(c) *****

4
5 **(d) Service**

6
7 The notice of motion and motion, ~~and the declaration,~~ and the proposed order must
8 be served on the client and on all other parties who have appeared in the case. The
9 notice may be by personal service or mail. If the notice is served on the client by
10 mail under Code of Civil Procedure section 1013, it must be accompanied by a
11 declaration stating facts showing that either:

12
13 (1) The service address is the current residence or business address of the client;
14 or

15
16 (2) The service address is the last known residence or business address of the
17 client and the attorney has been unable to locate a more current address after
18 making reasonable efforts to do so within 30 days before the filing of the
19 motion to be relieved.

20
21 As used in this rule, “current” means that the address was confirmed within 30
22 days before the filing of the motion to be relieved. Merely demonstrating that the
23 notice was sent to the client's last known address and was not returned is not, by
24 itself, sufficient to demonstrate that the address is current. If the service is by
25 mail, Code of Civil Procedure section 1011(b) applies.

26
27 **(e) Order**

28
29 The proposed order relieving counsel must be prepared on the *Order Granting*
30 *Attorney's Motion to Be Relieved as Counsel-Civil* (form MC-053) and must be
31 lodged with the court ~~and served on the client~~ with the moving papers. The order
32 must specify all hearing dates scheduled in the action or proceeding, including the
33 date of trial, if known. If no hearing date is presently scheduled, the court may set
34 one and specify the date in the order. After the order is signed, a copy of the
35 signed order must be served on the client and on all parties that have appeared in
36 the case. The court may delay the effective date of the order relieving counsel
37 until proof of service of a copy of the signed order on the client has been filed with
38 the court.

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Paraphrased comments are indicated by an asterisk; all other comments are verbatim.

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Cathrine Castaldi, President Newport Beach	A	No specific comments.	Commentator's agreement is noted.
2.	Alex Scheingross San Diego	A	Excellent idea!	Commentator's agreement is noted.
3.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch, Staff Attorney San Francisco	A	In reviewing this proposal, CAJ noted an erroneous cross-reference in the existing rule, which should be corrected at some point. The last sentence of rule 3.1362(d) provides that if the service is by mail "Code of Civil Procedure section 1011(b) applies." The intended significance of that sentence in the context of the rule is not entirely clear, but section 1011(b) does not address service by mail in any event.	The last sentence of rule 3.1362(d) is intended to address what provisions apply when counsel cannot locate a current address for the client. Service in that instance should be made under the final provision of Code Civ. Proc., § 1011(b), which provides for service by delivery to the court when a party's address is not known. (See also rule 3.252.) To the extent the rule is ambiguous, revision is beyond the scope of this proposal. The committee will consider whether this rule needs to be further amended to clarify the matter in the future.
4.	Superior Court of Los Angeles County Los Angeles	A	No specific comments.	Commentator's agreement is noted.
5.	Superior Court of Riverside County By David Gutknecht Supervising Management Analyst Riverside	A	The placement of the service requirements related to motions to be relieved as counsel under one subdivision of rule 3.1362 should eliminate the confusion created by the current rule whereby the service requirements are listed in separate subdivisions.	The committee agrees.

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	Commentator	Position	Comment	Committee Response
6.	Superior Court of Sacramento County By Edward G. Pollard Chief Deputy Court Executive Officer	A	We agree with this proposal as written.	Commentator's agreement is noted.
7.	Superior Court of San Bernardino County By Debra K. Meyers Director of Staff Counsel Services and Self-Help Division	A	No specific comments.	Commentator's agreement is noted.
8.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer	A	No specific comments.	Commentator's agreement is noted.
9.	Superior Court of Ventura County Self-Help Legal Access Center By Tina Rasnow Senior Attorney/Coordinator	A	No specific comments.	Commentator's agreement is noted.
10.	Derek Tabone, Attorney Van Nuys	A	No specific comments.	Commentator's agreement is noted.