Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2011

Title
Alternative Dispute Resolution: Judicial Arbitration

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 3.826 and 3.827; revise form ADR-102

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

Agenda Item Type
Action Required

Effective Date
January 1, 2012

Date of Report
August 1, 2011

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Executive Summary

The Civil and Small Claims Advisory Committee recommends amending the rules and a form relating to the judicial arbitration program to reflect statutory changes that increase the time within which a party may request a trial de novo and provide that filing of a request for dismissal before expiration of this time period will prevent entry of the arbitration award as the judgment in the case. This would conform the rules and form to statutory changes that will take effect on January 1, 2012.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2012:

1. Amend rule 3.826 to change the time within which a party may request a trial de novo following judicial arbitration from 30 days to 60 days following filing of the arbitration award;

2. Amend rule 3.827 to:

   a. Change the time after which the arbitration award will be entered as the judgment of the court from 30 days to 60 days following filing of the arbitration award;

   b. Provide that filing of a *Request for Dismissal* (form CIV-110) of the entire case or as to all parties to the arbitration before expiration of this time period will prevent entry of the arbitration award as the judgment; and

   c. Require that the *Request for Dismissal* be fully completed and include the signatures of all those whose consent is required for dismissal; and

3. Revise the notice box at the top of the *Request for Trial De Novo After Judicial Arbitration* (form ADR-102) to reflect these changes.

The text of the amended rules and revised form is attached at pages 5–7.

Previous Council Action

Under the legislation that originally established the judicial arbitration program as an experiment in 1978, the Judicial Council was required to review the effectiveness of this program. In 1983, the Judicial Council submitted its report to the Legislature, generally concluding that the judicial arbitration program was a valuable dispute resolution mechanism that had favorably affected the cost, complexity, and time associated with litigation of smaller civil cases. Based on this report, the council recommended that the sunset on the statutes authorizing the judicial arbitration program be eliminated so that the judicial arbitration program could be retained.

As part of the legislation eliminating the sunset provision, the council sponsored a proposal to amend Code of Civil Procedure section 1141.20 to increase the time for filing a request for a trial de novo from 20 days to 30 days following the filing of the judicial arbitrator's award.[1] This change was recommended to "reduce the number of prophylactic requests for trial de novo by giving clients and principals, particularly those who reside out of state, more time to decide whether to accept the arbitration award."[2] In December 2010, the Judicial Council approved a proposal to sponsor legislation to amend sections 1141.20 and 1141.23 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 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.

[1] Sen. Bill 1251; Stats. 1984, ch. 1249.

[2] October 23, 1983, report to Judicial Council's Superior Court Committee from Administrative Office of the Courts staff attorney Morris Beatus.

The Judicial Council originally adopted rules for the judicial arbitration program effective July 1, 1976, and the rules have been amended on several occasions since that time.

Rationale for Recommendation

California Code of Civil Procedure sections 1141.10–1141.31 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 in effect until January 1, 2012, 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 and the Judicial Council agreed to 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 request for a trial de novo; and (2) providing that filing a request for dismissal, in the form required by the Judicial Council, during this time period will also prevent entry of the arbitrator's award as the judgment of the court. The bill to make these statutory changes was enacted and these changes will take effect on January 1, 2012.[3]

Rules 3.810–3.830 of the California Rules of Court establish procedures for the judicial arbitration program. Like the judicial arbitration statutes, rules 3.826 and 3.827 currently provide that 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. These rules need to be amended effective January 1, 2012, to conform to the amended statutes. Accordingly, this report recommends amending the rules to reflect both the 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, the recommended amendments to rule 3.826 require a request for dismissal for this purpose to:

- Be made on *Request for Dismissal* (form CIV-110) (this is a mandatory form);
- Request dismissal of the entire case or as to all parties to the arbitration; and
- Be fully completed and include the signatures of all those whose consent is required for dismissal.

Request for Trial De Novo After Judicial Arbitration (form ADR-102) is an optional form that parties can use to request a trial de novo following judicial arbitration. The notice box at the top of this form reflects the 30-day period for requesting a trial de novo established by current judicial arbitration statutes and rules. This form therefore also needs to be revised to conform to the amended statutes and rules.

[3] Senate Bill 731, signed by the Governor July 5, 2011.

Comments, Alternatives Considered, and Policy Implications

Comments

A proposal to amend rules 3.826 and 3.827, as well as several other rules relating to the judicial arbitration program, was circulated between April 21 and June 20, 2011, as part of the regular spring 2011 comment cycle.[4] Nine individuals or organizations submitted comments on this proposal. Three commentators agreed with the proposal, four agreed with the proposal if modified, one disagreed with the proposal, and one did not indicate a position. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 8–23.

Two commentators disagreed with giving parties 60, rather than the current 30, days to file a request for a trial de novo. As noted above, however, this change is required to conform the rules to the statutory changes that will take effect January 1, 2012. When the proposal to sponsor legislation to change this statutory time frame was circulated for public comment in 2010, six of the seven commentators supported that change.

Most of the other substantive comments received relate to proposed amendments to rules 3.817, 3.818, 3.819, 3.825, 3.829, and 3.1390 that were included in the invitation to comment. Based on those comments, the committee is not recommending adoption of these rule amendments at this time. Instead, the committee has revised its proposed amendments to these rules and plans to request that this modified proposal be circulated for public comment this winter.

Alternatives Considered

The committee considered not recommending any changes to rules 3.826 and 3.827. However, the committee concluded that these changes are necessary to conform the rules to the recently enacted statutory changes. Although there may be some costs associated with reprogramming case managements systems to reflect the new timeframe for filing trial do novo requests, any such costs would be imposed under the recently enacted statutory changes, regardless of whether the rules are amended. In addition, as discussed below, the committee anticipates that the changes will result in offsetting savings.

Implementation Requirements, Costs, and Operational Impacts

The combination of the statutory amendments and recommended changes to the rules of court should reduce costs for both the parties and the courts associated with preparing, filing, and processing unnecessary trial de novo requests and allow courts to more accurately assess the impact of judicial arbitration on their caseloads. However, courts may experience some costs associated with reprogramming their case management systems to reflect these changes,

[4] The recommended revisions to form ADR-102 were not circulated for public comment. However, the committee's view is that these revisions are minor technical changes to conform the form to statute and that they therefore need not be circulated for comment.

particularly the increase from 30 to 60 days for entry of the judicial arbitration award as the judgment in a case.

Attachments

1. Cal. Rules of Court, rules 3.826 and 3.827, at page 6
2. Form ADR-102, at pages 7–8

Comment Chart, at pages 9–24

Rules 3.826 and 3.827of the California Rules of Court are amended, effective January 1, 2012, to read:

Title 3. Civil Rules

Division 8. Alternative Dispute Resolution

Chapter 2. Judicial Arbitration

Rule 3.826. Trial after arbitration

(a) Request for trial; deadline

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

(b)–(d) * * *

Rule 3.827. Entry of award as judgment

(a) Entry of award as judgment by clerk

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

(1) A request for trial as provided in these rules~~.~~; or

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

(b)–(c) * * *

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	***FOR COURT USE ONLY***
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
REQUEST FOR TRIAL DE NOVO AFTER JUDICIAL ARBITRATION	CASE NUMBER:

NOTE:
If you do not want the arbitrator's award to become the judgment in the case, you must file either a request for a trial de novo or a request for dismissal within 60 days after the arbitration award is filed with the clerk. If you do not request a trial de novo or dismissal by this deadline, the arbitrator's award will be final and it will be entered as the judgment in the case. The 60-day period cannot be extended (California Rules of Court, rule 3.826).

Copies of the request for a trial de novo must be served on all parties and the request and a proof of service must be filed with the clerk.

☐ Plaintiff ☐ Defendant ☐ Other *(specify):*

(name):

requests trial de novo in this action, under Code of Civil Procedure, section 1141.20 and rule 3.826 of the California Rules of Court.

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
ADR-102 [Rev. January 1, 2012]

REQUEST FOR TRIAL DE NOVO AFTER JUDICIAL ARBITRATION
(Alternative Dispute Resolution)

Code of Civil Procedure, § 1141.20;
Cal. Rules of Court, Rule 3.826
www.courts.ca.gov

SHORT TITLE:	CASE NUMBER:

PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My residence or business address is *(specify):*

3. I mailed or personally delivered a copy of the *Request for Trial De Novo After Judicial Arbitration* as follows *(complete either a or b):*

   a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
      (1) I enclosed a copy in an envelope and
         (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
         (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary court of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
      (2) The envelope was addressed and mailed as follows:
         (a) Name of person served:
         (b) Address on envelope:
         (c) Date of mailing:
         (d) Place of mailing *(city and state):*

   b. ☐ **Personal delivery.** I personally delivered a copy as follows:
      (1) Name of person served:
      (2) Address where delivered:
      (3) Date delivered:
      (4) Time delivered:

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) (SIGNATURE OF DECLARANT)

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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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	ADR Committee State Bar of California By Laurel Kaufer – Chair	AM	The ADR Committee supports this proposal, if modified. We supported the proposed statutory amendments, now included in SB 731, that 1) give parties 60, rather than 30, days to file a request for a trial de novo; and 2) provide that filing a request for dismissal during this same time period will also prevent entry of the arbitrator's award as a judgment. We also support the parallel change that is proposed to rule 3.827. We note, however, that other proposed changes to the rules would use filing a notice of entry of dismissal as the triggering event, as opposed to filing a request for dismissal. We believe that filing a request for dismissal should be used instead, in all cases, and that proposed rule 3.829(b) should be modified to require a party that files a request for dismissal to serve a copy of that request on the arbitrator, instead of requiring service of the notice of entry of dismissal. The earliest reliable indicator of a real settlement is the filing of a request for dismissal. At that point, the ADR Committee believes 1) the arbitrator should not set a hearing, 2) any hearing that has been set should be cancelled, and 3) the arbitrator should not file an award. There are several steps between filing a request for dismissal and filing a notice of entry of dismissal. Moving forward with a judicial arbitration in any way, after the request for dismissal has been filed, seems unnecessary and inefficient.	The committee agrees with this suggestion. However, this would be a substantive change from the proposal that was circulated for public comment. To give the public an opportunity to comment on this new approach, the committee will ask for authorization to circulate a revised proposal for comment this winter.

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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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			CIV-110 (Request for Dismissal) is a mandatory form. If all is proper with that form, the remaining steps are essentially mechanical, but might take some time – assuming all are properly completed. After a party files the CIV-110, the next step is for the clerk to complete the information requested in boxes 4 through 7. As noted in box 7.b, an attorney or party without an attorney will not be notified about the entry of the dismissal (or non-entry of the dismissal, with reasons specified) if the attorney or party does not include a copy to be conformed and a means to return the conformed copy. To emphasize this point, CIV-110 has a warning that says: "A conformed copy will not be returned by the clerk unless a method of return is provided with the document." Self-represented litigants in particular may not realize the significance of this step, and no party can file CIV-120 (Notice of Entry of Dismissal) until they have the conformed copy of the entered dismissal. Even when a party does include with a request for dismissal a copy to be conformed and a means to return the conformed copy, there can be extra steps and extra time involved. The ADR Committee is aware, for example, of situations where the clerk has returned a conformed copy of the *filed* request for dismissal, without noting anything in Boxes 4, 5 or 6 concerning *entry* of the dismissal. In that	

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	Commentator	Position	Comment	Committee Response
			circumstance, the party needs to go back again, and confirm that a dismissal is actually entered, as requested. Finally, even though rule 3.1390 currently requires a party that requests dismissal of an action to serve on all parties and file a notice of entry of the dismissal, the ADR Committee believes that parties (whether represented or not) often fail to comply with that extra procedural step, particularly in two-party cases where plaintiff and defendant have agreed to the dismissal and a conformed copy of the dismissal as entered appears to suffice. Further, although the plaintiff is the party that requests dismissal of his or her action, the defendant has the incentive to ensure that dismissal is requested and entered. In some cases, the defendant will therefore be the party filing the request for dismissal, after receiving the completed and signed CIV-110 from the plaintiff, and the defendant will then mail the conformed copy of the dismissal as entered to the plaintiff. But in that case the plaintiff (the party requesting dismissal under rule 3.1390) is unlikely to then file a notice of entry of dismissal and serve on the defendant the same document that plaintiff just received from the defendant. Most dismissals should be entered as requested. Cases where dismissal is requested but not entered – for whatever reason – can presumably be brought back into the system. The ADR	

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	Commentator	Position	Comment	Committee Response
			Committee believes that a judicial arbitration should essentially stop at the earliest reasonable juncture – filing of the request for dismissal – the point at which the parties presumably believe the case has actually been settled.	
2.	Committee on Administration of Justice State Bar of California	AM	CAJ supports this proposal, if modified. CAJ supported the proposed statutory amendments, now included in SB 731, that 1) give parties 60, rather than 30, days to file a request for a trial de novo; and 2) provide that filing a request for dismissal during this same time period will also prevent entry of the arbitrator's award as a judgment. We also support the parallel change that is proposed to rule 3.827. We note, however, that other proposed changes to the rules would use filing a notice of entry of dismissal as the triggering event, as opposed to filing a request for dismissal. We believe that filing a request for dismissal should be used instead, in all cases, and that proposed rule 3.829(b) should be modified to require a party that files a request for dismissal to serve a copy of that request on the arbitrator, instead of requiring service of the notice of entry of dismissal. The earliest reliable indicator of a real settlement is the filing of a request for dismissal. At that point, CAJ believes 1) the arbitrator should not set a hearing, 2) any hearing that has been set should be cancelled, and 3) the arbitrator should not file an award.	Please see response above to the comments of the ADR Committee of the State Bar of California.

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			There are several steps between filing a request for dismissal and filing a notice of entry of dismissal. Moving forward with a judicial arbitration in any way, after the request for dismissal has been filed, seems unnecessary and inefficient. CIV-110 (Request for Dismissal) is a mandatory form. If all is proper with that form, the remaining steps are essentially mechanical, but might take some time – assuming all are properly completed. After a party files the CIV-110, the next step is for the clerk to complete the information requested in boxes 4 through 7. As noted in box 7.b, an attorney or party without an attorney will not be notified about the entry of the dismissal (or non-entry of the dismissal, with reasons specified) if the attorney or party does not include a copy to be conformed and a means to return the conformed copy. To emphasize this point, CIV-110 has a warning that says: "A conformed copy will not be returned by the clerk unless a method of return is provided with the document." Self-represented litigants in particular may not realize the significance of this step, and no party can file CIV-120 (Notice of Entry of Dismissal) until they have the conformed copy of the entered dismissal. Even when a party does include with a request for dismissal a copy to be conformed and a means to return the conformed copy, there can	

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	Commentator	Position	Comment	Committee Response
			be extra steps and extra time involved. CAJ is aware, for example, of situations where the clerk has returned a conformed copy of the *filed* request for dismissal, without noting anything in Boxes 4, 5 or 6 concerning *entry* of the dismissal. In that circumstance, the party needs to go back again, and confirm that a dismissal is actually entered, as requested. Finally, even though rule 3.1390 currently requires a party that requests dismissal of an action to serve on all parties and file a notice of entry of the dismissal, CAJ believes that parties (whether represented or not) often fail to comply with that extra procedural step, particularly in two-party cases where plaintiff and defendant have agreed to the dismissal and a conformed copy of the dismissal as entered appears to suffice. Further, although the plaintiff is the party that requests dismissal of his or her action, the defendant has the incentive to ensure that dismissal is requested and entered. In some cases, the defendant will therefore be the party filing the request for dismissal, after receiving the completed and signed CIV-110 from the plaintiff, and the defendant will then mail the conformed copy of the dismissal as entered to the plaintiff. But in that case the plaintiff (the party requesting dismissal under rule 3.1390) is unlikely to then file a notice of entry of dismissal and serve on the defendant the same document that plaintiff just received from the defendant.	

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	Commentator	Position	Comment	Committee Response
			Most dismissals should be entered as requested. Cases where dismissal is requested but not entered – for whatever reason – can presumably be brought back into the system. CAJ believes that a judicial arbitration should essentially stop at the earliest reasonable juncture – filing of the request for dismissal – the point at which the parties presumably believe the case has actually been settled.	
3.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
4.	Public Policy Committee California Dispute Resolution Council By James Madison, Chair	AM	This proposal is to amend the Rules of Court to harmonize them with Sections 1141.20 and 1141.23 of the Code of Civil Procedure as will be in effect on and after January 1, 2012, assuming that SB 731, which is currently pending in the California Legislature, is enacted into law as anticipated. (The bill has passed out of the Senate unanimously, and has no known opposition in the Assembly or in the Office of the Governor). The CDRC supports the proposal, subject to the following comments: a. The CDRC believes that "request for dismissal" should be substituted for "notice of entry of dismissal" in proposed Rules 3.817(a)(2), 3.817(b)(2), 3.819(a), 3.819(c), 3.815(b)(1)(C) and 3.829(b). Rule 3.1385 establishes a deadline for filing a "request for dismissal" in the event of settlement of a case. There is no established deadline for the	Please see response above to the comments of the ADR Committee of the State Bar of California.

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	Commentator	Position	Comment	Committee Response
			ministerial act of entering a dismissal to be performed by the clerk of a court in response to a request therefore, and the time lapse between filing a request for dismissal and entry of the requested dismissal is not within the control of a party. Thus, the CDRC urges the substitution in keeping with having expiration of the anticipated 60-day deadline for forestalling entry of an arbitration award as a judgment being a deadline within the control of parties. b. The CDRC urges that the phrase "and no later than 30 days" be inserted between "5 days" and "after the date" on the third lines of proposed Rule 3.817(b)(2). Without such a change, there would be no deadline for holding a hearing in the event a notice of settlement was filed, but the deadline for filing a request for settlement did not occur until after expiration of the original 90-days period within which an arbitration hearing must be held.	The committee agrees with this suggestion. However, this would be a substantive change from the proposal that was circulated for public comment. To give the public an opportunity to comment on this new approach, the committee will ask for authorization to circulate a revised proposal for comment this winter.
5.	Elizabeth Strickland Superior Court of Santa Clara County	AM	I disagree strongly with the stated basis of these proposals that "a notice of settlement is not a reliable indicator of the completion of a case". That may be the status in some counties, but it is not the case in Santa Clara. For a variety of reasons stated below, I do not support the proposal that the rules should be changed to allow only for a notice of entry of dismissal to stop the setting of an arbitration hearing date or the entry of an arbitrator's award as judgment. I also do not agree that a notice of dismissal should be required in order to allow payment to	

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	Commentator	Position	Comment	Committee Response
			be made to an arbitrator. A. Rule 3.817 (a)(2) and (b)(2); These proposed rule additions, as written, are not practicable for the following reasons. These rule changes, especially (b)(2), would work only in the context of unconditional settlements, which require parties to dismiss within 45 days. In some cases, when a notice of settlement is filed, parties have agreed to payments over a long period of time. If the settlement is conditional, the settlement pay-off arrangement may span several months, or possibly even years. Proposed rule 3.817(a)(2) provides only for a notice of entry of dismissal to stop the setting of an arbitration hearing date. A notice of settlement should also be included as a valid reason not to require an arbitrator to set hearing date for an arbitration that is unlikely to take place. There is no purpose served by booking an arbitrator's time unnecessarily. Proposed rule 3.817(b)(2) addresses the resetting of an arbitration hearing until after a dismissal is due. Although it would be inconvenient for an arbitrator to keep a hearing date on calendar 50 days hence when it is unlikely that an arbitration will take place, that is not completely out of the question. But if the	The committee is concerned that, in some courts, providing that filing a notice of settlement eliminates the need for an arbitrator to set a hearing date may result in difficulties and administrative burdens on the court in re-starting the arbitration process if the settlement falls through. The committee therefore believes that each court should determine locally whether to adopt a rule requiring this.

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	Commentator	Position	Comment	Committee Response
			payments take more than 45 days, the burden on the arbitrator becomes unacceptable. If, for instance, the payments will be made over the course of 2 years, it is overly burdensome and unworkable for an arbitrator to keep a hearing date on calendar two years out. Not only will it book up an arbitrator's time unnecessarily, it will also lead busy arbitrators to remove themselves from the panel due to the unreasonable complications that this rule change would bring. The proposed rule, as currently written, will damage courts' ability to retain quality arbitrators. Proposed rule 3.817(a)(2) should be amended to provide as follows; "If, before a hearing has been set, the plaintiff files a notice of settlement or notice of entry of dismissal of the entire case or as to all parties to the arbitration, the arbitrator must not set a hearing date." Proposed rule 3.817(b)(2) should be amended to provide as follows; "If the plaintiff files a notice of settlement as required under rule 3.829, the hearing date, if already set, will be canceled, and the court will set a dismissal review date out no earlier than 5 days after the date on which the party is required to file a request for dismissal. If the plaintiff files a notice of entry of dismissal of the entire case or as to all parties to the arbitration, the hearing must be canceled. "	

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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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			This arrangement would meet the court's need for keeping track of the case without burdening and alienating the members of the arbitration panel. We set dismissal review calendars regularly here in Santa Clara County, and they work very well to track cases without asking our near-volunteer arbitrators to clutter their calendars with events that will only be canceled. For these reasons, I support this rule change only as amended.	
			B. Rule 3.819(a) & (c); These proposed revisions, as written, are not practicable for the following reasons. Proposed rule 3.819(a) & (c) address the requirements for payments to be made to an arbitrator. Many arbitrators spend significant time and energy trying to help parties settle their case, rather than have parties wait for an award and then weigh the acceptance or rejection of such award. Some settled cases require time, in some cases years, for settlement terms to be fully complied with. If this rule is amended as proposed, arbitrators would have to wait much longer for the very small compensation that we pay them. If, for instance, the payments will be made over the course of 2 years, the arbitrator would have to wait more than 2 years for the small payment	Rule 3.819 (b) currently permits an arbitrator to request payment from the court if the arbitrator devoted a substantial amount of time to a case that was settled without a hearing. This existing provision should cover situations in which the parties reach a conditional settlement before an arbitration hearing is held. However, it would not cover situations in which such a settlement is reached after a hearing is held. The committee has therefore modified its proposed amendment to rule 3.819 to provide more broadly that an arbitrator can request compensation if the arbitrator devoted a substantial amount of time to a case that was settled without issuance of an award. However, this would be a substantive change from the proposal that was circulated for public comment. To give the public an opportunity to comment on this new approach, the committee will ask for authorization to circulate a revised proposal for comment this winter.

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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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			of $150. That is a completely unacceptable result of this proposed rule amendment. The proposed rule, as currently written, will damage courts' ability to retain quality arbitrators. We pay them astonishingly little as it is; we should not ask them to wait months or years to see that payment made. Proposed rule 3.819(a) should be amended to provide as follows; "The arbitrator's award must be timely filed with the clerk under rule 3.825(b) or a notice of settlement of notice of dismissal must have been filed before a fee may be paid to the arbitrator. " Proposed rule 3.819(c) should be amended to provide as follows; "The arbitrator's fee statement must be submitted to the administrator promptly upon the completion of the arbitrator's duties and must set forth the title and number of the case arbitrated, the date of the arbitration hearing, and the date the award or notice of settlement or notice of entry of dismissal was filed. " This arrangement would still allow the court to timely compensate the work of our invaluable arbitrators. It would also prevent the rules from alienating the members of the arbitration panel, and allow us to try and retain the hard-working arbitrators we still have. For these reasons, I support this rule change	

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	Commentator	Position	Comment	Committee Response
			only as amended. C. Rule 3.825 (C) & 3.827(a)(2); I do not agree that a notice of settlement should not be considered sufficient to stop the clock on the entrance of an arbitrator's award as a judgment of the court. In some cases, when a notice of settlement is filed, parties have agreed to payments over a long period of time. If the settlement is conditional, the settlement pay-off arrangement may span several months or years. If, for instance, the payments will be made over the course of 2 years, parties cannot file a dismissal until terms are complied with. If this rule is put into effect as proposed, parties would have to file a request for trial de novo in order to stop the arbitration clock, and then file a notice of conditional settlement in order to allow for time for payments to be made. Requiring duplicate paperwork is unnecessarily burdensome and costly to parties, and serves no logical purpose, when one filing could serve both functions and save parties time, effort and money. Rule 3.825 (C) should be amended to provide as follows; "If, before the award has been filed, the plaintiff files a notice of settlement or notice of entry of dismissal of the entire case or as to all parties to the arbitration, the arbitrator must not file the award."	For the reasons discussed above, the committee is concerned that if rule 3.825 were amended to provide that filing a notice of settlement eliminates the need for an arbitrator to file an award, in some courts, may result in difficulties and administrative burdens on the court in re-starting the arbitration process if the settlement falls through. The committee therefore believes that each court should determine locally whether to adopt a rule requiring this.

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	Commentator	Position	Comment	Committee Response
			Rule 3.827 (a)(2) should be amended to provide as follows; "A Notice of Settlement (form CM-200) or a Request for Dismissal (form CV-110) of the entire case or as to all parties to the arbitration. The Notice of Settlement or Request for Dismissal must be fully completed and must include the signatures of all those whose consent is required for dismissal." This wording would allow parties to timely settle the case without extra procedural burdens being placed on them. For these reasons, I support this rule change only as amended.	Rule 3.827 must be amended as proposed to conform to recent legislation. On July 5, the governor signed legislation sponsored by the Judicial Council which amended the statutes establishing the judicial arbitration program effective January 1, 2012 to provide that filing of a request for dismissal prevents entry of the arbitrator's award as the judgment. In 2010, the committee did consider and even circulated for public comment a proposal to sponsor legislation amending the judicial arbitration statutes to provide that filing a notice of settlement within the statutory period would prevent entry of the arbitrator's award as the judgment in the case. While most commentators supported this change, one court suggested that, rather than having a notice of settlement stop entry of the arbitrator's award as the judgment, it should be the filing of a request for dismissal that serves this function. The main reason for this suggestion was that in some cases, a final settlement and dismissal of the action is not achieved after the filing of a notice of settlement. The court expressed concern that in such circumstances, a case could be in limbo since the arbitrator's award would no longer be pending potential entry as the judgment. The committee agreed with these comments, revised is proposal to instead provide that filing of a request for dismissal would prevent entry of the arbitrator's award as the judgment, and circulated this revised proposal for public comment. Seven individuals

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	Commentator	Position	Comment	Committee Response
				or organizations commented on this revised proposal, six of whom agreed with the proposal in its entirety and none of whom expressed concerns about the filing of the notice of dismissal being recommended as the trigger for preventing entry of the arbitrator's award as the judgment in case. The committee therefore recommended and the council approved sponsoring legislation to make this change.
			Rule 3.826 I do not agree with the proposal that the deadline for the filing of a request for trial de novo should be extended from 30 days to 60 days. Most attorneys know within minutes of reading an arbitrator's award whether or not they intend to file a rejection of the award and request trial. They do not file their rejection, however, until the last moment that they can, in order to see what the opposing side will do. Giving them twice as much time will not increase the likelihood that they will file their rejection quickly; it will only delay the inevitable action and thereby delay the management and resolution of the case. This proposal will not serve litigants, and will only provide an opportunity to delay resolution and justice. For these reasons, I do not support this rule change.	Rule 3.826 must be amended as proposed to conform to recent legislation. On July 5, the governor signed legislation sponsored by the Judicial Council which amended the statutes establishing the judicial arbitration program effective January 1, 2012 to provide that parties have 60, rather than 30, days to request a trial de novo. When the proposal to sponsor legislation to change this statutory timeframe was circulated for public comment in 2010, six of the seven commentators supported that change. The committee therefore recommended and the council approved sponsoring legislation to make this change.

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6.	Superior Court of Los Angeles County	A	The ADR Committee notes that increasing the number of days (from 30 to 60) for a party to request a trial de novo may reduce the number of such requests, as more time will be available to settle. In addition, serving neutrals with a notice of entry of dismissal may reduce some erroneous entries of arbitrator awards, which later have to be vacated.	No response required.
7.	Superior Court of Monterey County By Minnie Monarque Director of Civil & Family Law Division	N	Do not agree with proposed changes: What is the purpose for allowing the additional 30 days for trial de Novo Request or Entry of Judgment? There is a concern about statistical disposition information being delayed.	Rule 3.826 must be amended as proposed to conform to recent legislation. On July 5, the governor signed legislation sponsored by the Judicial Council which amended the statutes establishing the judicial arbitration program effective January 1, 2012 to provide that parties have 60, rather than 30, days to request a trial de novo. When the proposal to sponsor legislation to change this statutory timeframe was circulated for public comment in 2010, six of the seven commentators supported that change. The committee therefore recommended and the council approved sponsoring legislation to make this change.
8.	Superior Court of Sacramento County By Robert Turner - ASO II Research & Evaluation Division	NI	No specific comment.	No response required.
9.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.