Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on February 28, 2012

Title
Civil Practice and Procedure: Addressing Class Actions and Waived Court Fees

Rules, Forms, Standards, or Statutes Affected
Revise form CIV-110

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

Agenda Item Type
Action Required

Effective Date
January 1, 2013

Date of Report
January 27, 2012

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends revising *Request for Dismissal* (form CIV-110) to include a notice that it may not be used for dismissal of a class action or a derivative action and to make changes to the sections that apply to waivers of court fees and costs.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise *Request for Dismissal* (CIV-110), effective January 1, 2013, to include a notice that it may not be used for dismissal of a class action or a derivative action and to make changes to the sections that apply to waivers of court fees and costs. The revised form is attached at pages 5–6.

Previous Council Action

The Judicial Council revised *Request for Dismissal* (form CIV-110), effective July 1, 2009, to include a declaration, required by Government Code section 68637(c)(4), stating that the court's

statutory lien has been paid or that any settlement, compromise, arbitration award, or other recovery has a value of less than $10,000.

Rationale for Recommendation

Class action notice

A judge of the Superior Court of Los Angeles County informed the chair of the Civil and Small Claims Advisory Committee that attorneys file requests for dismissal of class action on "regular dismissal forms" and staff enters the dismissal without bringing the matter to the court's attention. The judge suggested form changes to address this.

Entering the dismissal in this way is reportedly the standard practice for requests for dismissal of non–class actions. In addition, advisory committee members understood that another concern with requests for dismissal of class actions is that attorneys make these requests on documents with a variety of different names. Because it is not obvious that these documents are requests for dismissal of class actions, they may not be presented to the court for timely action.

To address these problems, the Civil and Small Claims Advisory Committee proposes revising the form to clearly state that it may not be used for dismissal of a class action by adding the following in a box at the top of the form:

> This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

Waiver of court fees and costs

In response to suggestions from superior court administrators, the committee also proposes changes to make this form clearer. The new fee waiver statutes mandate that a party filing a petition for dismissal must declare, under penalty of perjury, that the court's statutory lien has been paid or that any settlement, compromise, arbitration award, or other recovery has a value of less than $10,000. (Gov. Code, § 68637(c)(4).) Form CIV-110 was revised when the new fee waiver forms were developed to include a declaration to this effect on the back, along with an item on the front (item 2) for a party to indicate that a fee waiver exists in the case. Currently, parties are supposed to check the statement in item 2 if there is a fee waiver in the case and then follow the instructions to complete the declaration on the back of the form. Court administrators pointed out that the form would be clearer if item 2 included two check boxes, one to indicate that a fee waiver exists in the case and one to indicate that it does not. Checking this second box is a more certain indicator than simply leaving the single box in current item 2 blank.

Accordingly, the proposed revisions include changes to item 2 that allow a party to indicate whether a fee waiver was or was not granted in the case. In addition, (1) the word *court* has been added in each place that references waiver of costs and fees, (2) the required declaration on the second page has been clarified, and (3) the box on the second page with information regarding

the court's lien on any proceeds over $10,000 has been given a title and moved above the title of the declaration. The outline of the box is bolder, to give it more emphasis.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for public comment during the spring 2011 comment cycle. Seven comments were received.[1] Commentators included four superior courts, a regional bar association, and two committees of the State Bar of California. Four agreed with the proposed revised form as circulated, two agreed if the form were modified, and one did not indicate a position on the proposal. The Superior Court of San Diego County noted that the revision leaves little space in item 6 for the clerk to write the reason the dismissal was not entered. The court suggested removing the case types at the top of the form to make more room for item 6. The advisory committee believes that removing case types from the form would be a reasonable solution to the form's space limitations.

As circulated for comment, the form revision added the following in a box at the top:

> This form may not be used for dismissal of a class action or any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

In response to a comment from the State Bar Rules and Legislation Committee, Litigation Section, (Litigation Section) this notice was revised slightly. The Litigation Section noted that class actions are not the only representative actions requiring court approval before a voluntary dismissal and suggested that the form be modified to state that it may not be used "for dismissal of a class action or other representative action where court approval is required before a dismissal." The Litigation Section stated that actions such as a shareholder derivative suit require court approval for a dismissal, and a representative action by a guardian ad litem might require court approval for a dismissal. Based on this comment, the advisory committee discussed adding "representative action" but decided that this general term would not necessarily clearly identify which actions need court approval before dismissal. Instead, the advisory committee recommended adding "derivative action." The advisory committee also identified the need for training of court clerks to identify when a dismissal requires court approval.

The advisory committee also modified the form slightly from the version that circulated for comment, to be consistent with the statutory language. The modifications include the words "court fees and costs" rather than "fees and court costs"; a statement that the court *may* refuse to dismiss the case until the court's statutory lien on the recovery is satisfied, rather than the statement that the lien *must* be paid before dismissal; and a citation to the statute, Government Code section 68637.

[1] A chart containing all comments and committee responses is on pages 7–8.

As an alternative to the form revisions proposed in this report, the committee could recommend a new form exclusively for dismissals of class actions or other specific representative actions or could recommend only additional training of court staff on handling such requests for dismissals. The current proposal to revise the form will not necessarily end the practice of attorneys filing other documents seeking dismissal of class actions and other representative actions. Because of the resources related to circulating new form proposals and implementing new forms and administrative practices, however, the advisory committee believes it is preferable at this time to revise existing *Request for Dismissal* (form CIV-110) rather than develop a new form.

In addition, the form could remain without an additional check box to indicate that court fees and costs were not waived and without revisions clarifying the declaration section, but these changes will make it easier for both the parties and the courts to use.

Implementation Requirements, Costs, and Operational Impacts

Because this form is prepared and filed by litigants or attorneys, revisions would have little or no implementation requirements or costs. The revisions are expected to reduce the improper use of this form for dismissal of class actions and derivative actions. In addition, the revisions are intended to more consistently identify cases in which the court waived fees and costs so the court may collect them, if authorized, before dismissal is entered.

Attachments

1. Form CIV-110, at pages 5–6
2. Chart of comments, at pages 7–8

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

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☐ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☐ Entire action of all parties and all causes of action
   (6) ☐ Other *(specify)*:*

2. *(Complete in all cases except family law cases.)*
   The court ☐ did ☐ did not waive court fees and costs for a party in this case. *(This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).*

Date:

. . . . . .

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross–Complainant

3. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross–Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on *(date)*:
5 ☐ Dismissal entered on *(date)*: as to only *(name)*:
6. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

7. a. ☐ Attorney or party without attorney notified on *(date)*:
   b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to be conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:

COURT'S RECOVERY OF WAIVED COURT FEES AND COSTS

If a party whose court fees and costs were initially waived has recovered or will recover $10,000 or more in value by way of settlement, compromise, arbitration award, mediation settlement, or other means, the court has a statutory lien on that recovery. The court may refuse to dismiss the case until the lien is satisfied. (Gov. Code, § 68637.)

Declaration Concerning Waived Court Fees

1. The court waived court fees and costs in this action for *(name):*
2. The person named in item 1 is (*check one below):*
   a. ☐ not recovering anything of value by this action.
   b. ☐ recovering less than $10,000 in value by this action.
   c. ☐ recovering $10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. ☐ All court fees and court costs that were waived in this action have been paid to the court *(check one):* ☐ Yes ☐ No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY MAKING DECLARATION) (SIGNATURE)

SPR11-15

Civil Practice and Procedure: Revisions to *Request for Dismissal* to Address Class Actions and Waived Court Fees

(revise form CIV-110)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association John Hueston, President	A		
2.	The State Bar of California Committee of Administration of Justice	A	CAJ supports this proposal.	No response necessary.
3.	State Bar of California Rules and Legislation Committee, Litigation Section Reuben A. Ginsburg Co-chair	A	The Rules and Legislation Committee agrees with the proposal, but notes that class actions are not the only representative actions requiring court approval before a voluntary dismissal. Court approval also is required to dismiss a shareholder derivative action (Ensher v. Ensher, Alexander & Barsoom (1960) 187 Cal.App.2d 407, 410) and may be required in other representative actions where court approval of a settlement is required (see Scruton v. Korean Airlines Co. (1995) 39 Cal.App.4th 1596, 1605-1606 [settlement of action by guardian ad litem]). The committee suggests that form CIV-110 should be modified to state that it may not be used for dismissal of a class action or other representative action where court approval is required before a dismissal.	The committee agrees that the form should be revised to include other actions that require court approval for dismissal. The committee has modified the form to include derivative actions.
4.	Superior Court of California, County of Modoc Ronda Gysin, Court Operations Manager	A	No narrative comments submitted.	No response necessary.
5.	Superior Court of California, County of Monterey Minnie Monarque, Director of Civil & Family Law	A	Agree with proposed changes	No response necessary.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR11-15

Civil Practice and Procedure: Revisions to *Request for Dismissal* to Address Class Actions and Waived Court Fees

(revise form CIV-110)

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

	Commentator	Position	Comment	Committee Response
	Division			
6.	Superior Court of California, County of Sacramento	NI		
7.	Superior Court of California, County of San Diego Mike Roddy, Executive Officer	AM	With the additions, there is now less space for #6 where the clerk writes in the reason the dismissal was not entered. Our court suggests removing the check boxes in the header that describe the type of case (Personal Injury..., Family Law, Eminent Domain, and Other) to make more room on the bottom portion of the form that the clerk completes. These boxes at the top describing the type of case are not very useful since they do not cover all the different case types and seem to be very random and the space could be better used elsewhere.	The committee agrees and has made this change.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.