

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SP13-01

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Title	Action Requested
Expedited Proposal to Allow Suspension of Mandatory Case Management Rules During Fiscal Crisis	Review and submit comments by January 25, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 3.712 and 3.720	February 26, 2013
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne M. Ronan, <a href="mailto:anne.ronan@jud.ca.gov">anne.ronan@jud.ca.gov</a> 415-865-8933

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### Executive Summary and Origin

This proposal would amend the statewide rules of court, on a temporary basis, to permit courts to exempt certain types or categories of general civil cases from the mandatory case management rules. The proposal will help courts to better address the current fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules.

The proposal is in response to a request from the Superior Court of Los Angeles County (L.A. Superior Court), reiterated by the Superior Court of Sacramento County, seeking relief from the current case management rules applicable to general civil cases. Because of L.A. Superior Court's schedule for implementing planned changes to its handling of civil cases, as well as the pressing needs of other courts to be relieved from the mandated conferences, this proposal is being circulated on a special shortened cycle so that it can be considered by the Judicial Council at its February 2013 meeting and, if approved, go into effect immediately upon approval.

### Background

Current civil case management rules (Cal. Rules of Court, rule 3.720 et seq.<sup>1</sup>) mandate that a

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<sup>1</sup> All citations herein to rules are to California Rules of Court unless otherwise noted.

*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 These proposals are circulated for comment purposes only.*

court provide individualized case management review in all general civil cases<sup>2</sup> within 180 days of the filing of the complaint, except in those types of cases specifically exempted (uninsured motorist cases, coordinated and complex cases, and uncontested collections cases), and conduct a mandatory case management conference in all applicable unlimited civil cases unless unnecessary in a particular case. (See rules 3.721 and 3.722.) Parties are required to meet and confer in advance of the conference and file a case management statement that addresses various issues about the pending action. (See rules 3.724 and 3.725.)

L.A. Superior Court has announced that, as part of its efforts to address the current fiscal crisis in the judicial branch, the court is reorganizing its system of managing civil cases and decreasing the number of civil departments. The court intends to take significant steps in implementing the planned reorganization in February 2013 as it removes all personal injury cases,<sup>3</sup> of which it currently has over 16,000 pending, from its individual calendar courts (in which general civil cases are assigned to a single judge for all purposes) and begins to set up two master calendars to handle those pending cases, with 8,000 cases assigned to each calendar. Particularly in light of these changes, the court has determined that, with its current limited resources, it cannot continue to provide all general civil cases with the type of individualized case supervision and management envisioned by the rules of court, and has been discussing the limitations and proposed alternatives with the local bar.

The Los Angeles court is not alone; many courts are facing similar issues with stretching limited resources to cover current case management requirements. For example, because of budget cuts and decreased staff, the Superior Court of Sacramento County has stated that it has experienced backlogs of as much as two months' worth of unprocessed civil filings—papers filed via drop box at the clerk's office but not entered into the court's computerized case management system until weeks after filing. Such delays result in problems for the parties as well as the court; for example, case management statements timely filed by the parties are often not available to the judicial officer at the time of the case management conference. Accordingly, the Sacramento County court is also seeking relief from the mandatory case management rules, in order to provide staff with more time to focus on processing complaints and motion papers rather than filing case management statements and setting conferences.

## **The Proposal**

The proposal would amend the case management rules so that, for a few years only, courts by local rule may opt to exempt certain types of general civil cases from the mandatory statewide case management rules, including the requirements for filing case management statements,

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<sup>2</sup> “General civil cases” are defined in the rules of court as all civil cases *except* probate, guardianship, conservatorship, juvenile, family law, small claims, and unlawful detainer proceedings, as well as certain civil petitions. (Rule 1.6(4).)

<sup>3</sup> L.A. Superior Court has determined that these cases typically require fewer appearances and less direct case management than other types of general civil cases.

conducting individual case review, and holding case management conferences, in order to reduce the burden on court staff and judicial officers.

Although individualized case management conferences have been considered the best practice for a court's oversight of the pace of civil litigation for over 10 years, under current budgetary constraints it is not possible for courts to employ optimal case management practices. The proposed exemption would permit a court to determine whether it can more effectively manage its civil cases overall, with current limited resources, by eliminating individualized case management conferences and review for some types of cases. At the same time, the statutory mandate of the Trial Court Delay Reduction Act (Gov. Code, § 68600 et seq.) remains in effect and courts continue to have the responsibility to oversee the progress of cases before them and to eliminate delay in the progress and ultimate resolution of litigation. The proposal therefore provides that some alternative method must be in place for the court's processing of those cases and to assure trial dates are set. The specifics of the proposal are described below.

### **Rule 3.720**

*Content of rule.* The proposed amendment to this rule allows a court to specify by local rule those types or categories of general civil cases to be exempted from the current mandatory case management rules, provided that the court has developed alternative procedures for processing those cases and setting trial dates, including procedures for complying with the statutes mandating judicial arbitration or mediation in certain cases.<sup>4</sup> The proposed rule does not otherwise mandate the content of the alternative case-processing and trial-setting procedures, allowing the courts flexibility to determine how to best process and manage the exempt cases, including whether or not to mandate that the parties file any statements with the court or meet and confer over any issues, and how and when trial setting is to occur.

The requirement that the categories of exempt cases be specified by local rule is consistent with rule 10.613<sup>5</sup> and is intended to ensure that counsel and parties will be able to determine, even before a case is filed, whether traditional case management rules will apply. The statute and rules of court generally require that a local rule may only take effect following at least a 90-day period after it is proposed—45 days for circulation for comment to the local bar and 45 days' notice to the Judicial Council. (Gov. Code, §68071, and rule 10.613(d) and (g).) The rules provide, however, that a presiding judge may request that the chair of the council approve a different effective date on a showing of good cause, which procedure may be used by a presiding judge to request that such time frames are modified and even eliminated altogether if need be. (Rule 10.613(i).)

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<sup>4</sup> Under current rules, a court's determination of whether a case is subject to mandatory judicial arbitration is tied to the initial conference or review under the case management rules. (See rule 3.812(d).) Hence any rule exempting cases from individualized case management review must provide that the local rules address this issue.

<sup>5</sup> Every "rule, regulation, order, policy, form, or standard of general application adopted by a court to govern practice or procedure in that court" is a local rule. (Rule 10.613(a)(1).) See also Gov. Code, § 68612 (trial court delay reduction procedures, policies and standards must, when feasible, be developed in consultation with the local bar and are to be filed distributed and maintained as local rules under Gov. Code § 68071).)

The proposed amendment does not mandate that a court include in its local rule the specific alternative case-processing and trial-setting procedures that it will employ with the exempted cases. The advisory committee concluded that flexibility and speed in developing and, if appropriate, changing, the alternative procedures are key for courts to be able to make use of this exemption in a way that will best balance fiscal concerns with concern for providing access to the courts. While some courts may set out the alternative procedures in local rules, others may find it more effective to issue standardized case management orders at the beginning of each case, as L.A. Superior Court plans to do, which could, for example, set the case for trial, give the parties dates by which a case must be submitted to mediation or arbitration if under \$50,000, and inform the parties how they can request a case management conference.

The proposal also requires that when case management conferences are set, they are to be held in accordance with current rules of court. This provision is intended to ensure that uniformity of procedures continues in those cases in which courts are able to continue to comply with the case management rules.

*Notice re alternative procedure.* One concern raised in light of the flexibility provided by the proposed rule is how to ensure that parties are aware of which procedures will apply in each court. The advisory committee asks for specific comments on this point and, in particular, on the possibility of adding a further provision to the amended rule, requiring a court that exempts cases from the case management rules to post the means by which parties can learn of those alternative procedures, whether in local rules or standardized orders or notices, on the court's website, either before or at the time of adopting such procedure.<sup>6</sup>

*Duration of exemption.* As noted in the proposed advisory committee comment to the rule, the intent of this proposal is not to change the case management rules on an ongoing basis, but only temporarily, while the state is experiencing a fiscal crisis that is severely impacting the courts' budgets. The proposed amendment provides a three-year period during which the exemption would be available to courts, allowing courts to exempt cases filed before January 1, 2016. Specific comments are requested on whether that is an appropriate duration for the exemption.

### **Rule 3.712**

If rule 3.720 is amended so that no individual case review is required for certain types of cases under the case management rules in chapter 3 (Case Management), those cases should also be exempted from the individual case review mandated under the rules in chapter 2 (Differential Case Management). The proposal includes an amendment to rule 3.712 to reflect that cases exempted from individual case management under amended rule 3.720 are also exempted from the individual review otherwise required under rule 3.714.

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<sup>6</sup> Such provision could be in a further paragraph at the end of rule 3.720(b), stating "Any local rules or standardized orders that address the alternative procedures for exempt actions must be published on the court's website."

## **Alternatives Considered**

The advisory committee considered three alternatives to this proposal.

### **Alternative 1. Take no action**

The advisory committee is aware that the council adopted the rules mandating individualized case management review and conferences as the best practice for case management and delay reduction. One alternative considered was to not recommend that the council take any action regarding these rules and to leave this best practice in place. In an ideal world, the committee would have chosen this alternative. The consensus of the advisory committee, however, is that in the current less than ideal world, in light of the major budget cuts occurring throughout the judicial branch, at least a temporary suspension of the rules is appropriate. Hence the committee rejected the alternative of not taking any action.

### **Alternative 2. Mandating minimum requirements of alternative procedures**

The advisory committee considered but rejected an alternative proposal in which the amended rule of court would have mandated some of the provisions to be included in the alternative case-processing and trial-setting procedures that a court applies to exempted cases. Under this proposal, those alternative procedures, adopted by local rule, would include requirements that the parties file case management conference statements, that the parties meet and confer about the case management issues listed in the current rules before filing such statements, that the courts review each case to determine whether to assign it to mandatory arbitration or mediation, and that the court set a trial date within a certain time after a case is filed.

The committee determined that this alternative did not provide sufficient flexibility to the courts, which, the committee concluded, were in the best position—with input from the local bar—to decide what procedures should be applied to exempted case types in order to achieve the best balance of savings and case management. The committee also particularly opposed a statewide rule mandating that all parties file case management statements, which court staff would have to file and process—tasks that some courts may hope to avoid for exempted cases.

### **Alternative 3. Mandating form and format of alternative procedures**

The advisory committee also considered a third alternative, similar to the proposal recommended here, that would leave the specific procedures applicable to exempted cases up to each court. That proposal, however, would have required that the courts address certain points by local rule, either directly or by specifying that these points would be addressed by case orders. Any such case orders would be standardized by the type or category of case exempted, and published on the court's website.<sup>7</sup>

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<sup>7</sup> This alternative included the following provision at the end of the recommended proposal:

The local rule must address each of points (A) through (D) below, either directly in the rule or by specifying that the point will be addressed by case order. Any such case order must be standardized by

Some committee members preferred this alternative as a way to ensure better notice to parties about what procedures would apply in a given case. The majority, however, concluded that this alternative was less flexible than the one ultimately recommended and that it added a level of unnecessary complexity to the proposal. This provision, therefore, is not included in the proposal recommended by the advisory committee.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation of this proposal would have impacts only on those courts that choose to exempt cases from the case management rules. Those courts will need to spend time consulting with the local bar, determining which categories or types of general civil cases to exempt from the case management rules, developing a local rule identifying such cases, developing alternative procedures to be applied to such cases, and training court staff and judicial officers on those procedures. Courts using computerized case management systems may have to alter those systems to implement the alternative procedures. However, all these potential costs should be more than offset by savings realized by court staff and judicial officers through not requiring individual case review in all general civil cases.

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exempted case type or category, be issued within [*a set number of*] days of the filing of a case and be published on the court's website.

- (A) Whether the parties must meet and confer to consider the issues described in rule 3.724 and, if so, by what time;
- (B) Whether the parties must file and serve a case management statement under rule 3.726 and, if so, by what time;
- (C) By what method a matter is to be assigned to mandatory judicial arbitration under rule 3.812 and Code of Civil Procedure section 1141.10 et seq. or to an alternative mandatory mediation program under Code of Civil Procedure section 1775 et seq.;
- (D) When the court will set a trial date for an exempted case.

Because the committee ultimately rejected this proposal, it did not consider whether a time frame for issuing standard orders should be included in the rule.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should a provision be added to the amended rule requiring a court that exempts cases from the case management rules to post the means by which parties can learn of those alternative procedures, whether in local rule or by standardized orders or notices, on the court website? If so, should the posting be required before the adoption of such procedure?
- Is the duration of the proposed exemption, which as proposed may be used for cases filed before January 1, 2016, appropriate?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be 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 systems, or modifying case management systems.
- Would the Judicial Council's approval of this proposal with an immediate effective date (i.e., as of February 26, 2013) cause any concern?
- How well would this proposal work in courts of different sizes?

### Attachments

Proposed amendments to Cal. Rules of Court, rules 3.712 and 3.720, at page 8.

Rules 3.712 and 3.720 of the California Rules of Court would be amended, effective February 26, 2013, to read:

1 **Title 3. Civil Rules**

2  
3 **Division 7. Civil Case Management**

4  
5 **Chapter 2. Differential Case Management**

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7 **Rule 3.712. Application and exemptions**

8  
9 **(a) General application**

10  
11 The rules in this chapter apply to all general civil cases filed in the trial courts except those  
12 specified in (b), (c), and (d) and except those specified types or categories of general civil  
13 cases that have been exempted from the case management rules under rule 3.720(b).

14  
15 **(b)–(d) \*\*\***

16  
17 **Chapter 3. Case Management**

18  
19 **Rule 3.720. Application**

20  
21 **(a) General application**

22  
23 The rules in this chapter prescribe the procedures for the management of all applicable  
24 court cases. These rules may be referred to as “the case management rules.”

25  
26 **(b) Emergency suspension of rules**

27  
28 A court by local rule may exempt specified types or categories of general civil cases filed  
29 before January 1, 2016, from the case management rules in this chapter, provided that the  
30 court has in place alternative procedures for case processing and trial setting for such  
31 actions, including, without limitation, compliance with Code of Civil Procedure sections  
32 1141.10 et seq. and 1775 et seq. In any case in which a court sets an initial case  
33 management conference, the rules in this chapter apply.

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35  
36 **Advisory Committee Comment**

37 Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources available  
38 to the courts as a result of the current fiscal crisis and is not intended as a permanent change in the case  
39 management rules.