



Judicial Council of California

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INVITATION TO COMMENT

SPR24-10

Title

Civil Practice and Procedure: Case Dismissal
With Retained Jurisdiction

Action Requested

Review and submit comments by May 3, 2024

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 3.1385;
revise form CIV-110

Proposed Effective Date

January 1, 2025

Proposed by

Civil and Small Claims Advisory Committee
Hon. Tamara L. Wood, Chair

Contact

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Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes amending California Rules of Court, rule 3.1385 and revising form CIV-110 to implement amended Code of Civil Procedure section 664.6, which allows courts to dismiss cases without prejudice and retain jurisdiction to enforce settlement terms.

Background

Last year, the Legislature enacted Assembly Bill 1756 (Stats. 2023, ch. 478).¹ The bill, among other things, makes several amendments to Code of Civil Procedure section 664.6.² Before the enactment of AB 1756, section 664.6 authorized courts to enter judgment pursuant to the terms of a settlement agreement stipulated to by the parties. Amended section 664.6 expands the court's authority in such situations by permitting the court to dismiss the case without prejudice and to retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.³ Such a dismissal of the case with retained jurisdiction can be ordered

¹ AB 1756 is available at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1756. The amendments to Code of Civil Procedure section 664.6 are in section 12 of the bill.

² All further statutory citations are to the Code of Civil Procedure, unless otherwise stated.

³ See § 664.6(a).

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

upon the stipulation of the parties, either in writing or orally before the court, or upon the court's own motion.⁴

California Rules of Court, rule 3.1385 prescribes certain actions that courts and the plaintiff or other party seeking affirmative relief must take upon the settlement of a case. Subdivision (a) of the rule requires the party seeking affirmative relief to notify the court, other parties, and any neutrals involved in the case of settlement. Subdivision (b) requires the party seeking affirmative relief to dismiss the case (generally by filing form CIV-110) within 45 days of the settlement. Subdivision (c) modifies such requirements in cases with conditional settlement agreements—rather than dismissing the case within 45 days, the party seeking affirmative relief must state the date that dismissal will be filed (when the terms of the settlement agreement will be satisfactorily performed).⁵

The Proposal

The changes proposed in this invitation to comment are needed to clarify dismissal requirements upon the settlement of a case. While both amended section 664.6 and rule 3.1385 govern the dismissal of cases after settlement, the two are not in direct conflict with one another.

Accordingly, the committee does not recommend amendments to the text of rule 3.1385, but rather the addition of advisory committee comments explaining how the rule operates depending on whether dismissal with retained jurisdiction under section 664.6 is sought.

Although amended section 664.6 provides for the oral settlement of cases followed by dismissal, it is still appropriate in such situations for the party seeking affirmative relief to notify the court, other parties, and neutrals of the settlement (as required in rule 3.1385(a)) and to file a request for dismissal (form CIV-110) (as required in rule 3.1385(b)). Thus, the committee proposes an advisory committee comment stating that even if the parties settle the case pursuant to section 664.6, the party seeking affirmative relief must still follow the procedures in rule 3.1385(a) and (b).

Amended section 664.6 supplants the need for rule 3.1385(c) if the parties stipulate to or if the court seeks dismissal under the section because a case may be dismissed immediately with retained jurisdiction rather than dismissing the case only upon the completion of settlement terms. The parties and the courts, however, are not obligated to dismiss the case under section 664.6 upon settlement. Accordingly, the committee proposes an advisory committee comment explaining that rule 3.1385(c) provides an alternative process to dismissal under section 664.6.⁶

⁴ § 664.6(a) & (e).

⁵ The rule also contains subdivision (d) (specific procedures if the case involves comprise of the claim of a minor or person with disability) and subdivision (e) (alternative procedure if the case cannot be dismissed within 45 days).

⁶ To the extent dismissal under section 664.6 becomes pervasive for parties with conditional settlement agreements, the committee may consider whether amendments to rule 3.1385(c) are needed at a later date.

Given that amended section 664.6 provides a third type of case dismissal—without prejudice and with the court retaining jurisdiction—the committee also proposes adding such an option to *Request for Dismissal* (form CIV-110) with a citation to section 664.6. The proposed revised form also requires all parties to sign the request for dismissal if the court will retain jurisdiction to ensure that such retention of jurisdiction is agreed to by all parties or ordered by the court as required in section 664.6.

The amended rule and revised form are attached at pages 5–7.

Alternatives Considered

The committee discussed several alternative ways to amend rule 3.1385. One alternative would be to not require the party seeking affirmative relief to perform the actions in rule 3.1385(a) and (b) if the party seeks dismissal under 664.6, but the committee determined that requiring such notices is the best way to ensure that all those involved in the case are aware of the settlement and that the court has a record of dismissal with retained jurisdiction. Another alternative was to eliminate rule 3.1385(c) altogether, but given that the provisions of 664.6 are not mandated on parties and court, retaining the dismissal procedures for conditional settlements is appropriate. The committee did not consider taking no action because leaving rule 3.1385 and form CIV-110 without modification would be confusing to courts and parties.

Fiscal and Operational Impacts

The committee anticipates that this proposal would require courts to train court staff and judicial officers on the amended rule and revised form. Courts will also incur costs to incorporate the revised form into the paper or electronic processes.

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?

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 three 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

1. Cal. Rules of Court, rule 3.1385, at page 5–7
2. Form CIV-110, at pages 8–9
3. Link A: AB 1756,
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1756

Rule 3.1385 of the California Rules of Court would be amended, effective January 1, 2025, to read:

1 **Rule 3.1385. Duty to notify court and others of settlement of entire case**

2
3 **(a) Notice of settlement**

4
5 (1) *Court and other persons to be notified*

6
7 If an entire case is settled or otherwise disposed of, each plaintiff or other
8 party seeking affirmative relief must immediately file written notice of the
9 settlement or other disposition with the court and serve the notice on all
10 parties and any arbitrator or other court-connected alternative dispute
11 resolution (ADR) neutral involved in the case. Each plaintiff or other party
12 seeking affirmative relief must also immediately give oral notice to all of the
13 above if a hearing, conference, or trial is scheduled to take place within 10
14 days.

15
16 (2) *Compensation for failure to provide notice*

17
18 If the plaintiff or other party seeking affirmative relief does not notify an
19 arbitrator or other court-connected ADR neutral involved in the case of a
20 settlement at least 2 days before the scheduled hearing or session with that
21 arbitrator or neutral, the court may order the party to compensate the
22 arbitrator or other neutral for the scheduled hearing time. The amount of
23 compensation ordered by the court must not exceed the maximum amount of
24 compensation the arbitrator would be entitled to receive for service as an
25 arbitrator under Code of Civil Procedure section 1141.18(b) or that the
26 neutral would have been entitled to receive for service as a neutral at the
27 scheduled hearing or session.

28
29 **(b) Dismissal of case**

30
31 Except as provided in (c) or (d), each plaintiff or other party seeking affirmative
32 relief must serve and file a request for dismissal of the entire case within 45 days
33 after the date of settlement of the case. If the plaintiff or other party required to
34 serve and file the request for dismissal does not do so, the court must dismiss the
35 entire case 45 days after it receives notice of settlement unless good cause is shown
36 why the case should not be dismissed.

37
38 **(c) Conditional settlement**

39
40 (1) *Notice*

41
42 If the settlement agreement conditions dismissal of the entire case on the
43 satisfactory completion of specified terms that are not to be performed within

1 45 days of the settlement, including payment in installment payments, the
2 notice of conditional settlement served and filed by each plaintiff or other
3 party seeking affirmative relief must specify the date by which the dismissal
4 is to be filed.

5
6 (2) *Dismissal*

7
8 If the plaintiff or other party required to serve and file a request for dismissal
9 within 45 days after the dismissal date specified in the notice does not do so,
10 the court must dismiss the entire case unless good cause is shown why the
11 case should not be dismissed.

12
13 (3) *Hearings vacated*

14
15 (A) Except as provided in (B), on the filing of the notice of conditional
16 settlement, the court must vacate all hearings and other proceedings
17 requiring the appearance of a party and may not set any hearing or
18 other proceeding requiring the appearance of a party earlier than 45
19 days after the dismissal date specified in the notice, unless requested by
20 a party.

21
22 (B) The court need not vacate a hearing on an order to show cause or other
23 proceeding relating to sanctions, or for determination of good faith
24 settlement at the request of a party under Code of Civil Procedure
25 section 877.6.

26
27 (4) *Case disposition time*

28
29 Under standard 2.2(n)(1)(A), the filing of a notice of conditional settlement
30 removes the case from the computation of time used to determine case
31 disposition time.

32
33 (d)–(e) * * *

34
35 **Advisory Committee Comment**

36
37 **Subdivisions (a) and (b).** Amended Code of Civil Procedure section 664.6 allows parties to
38 settle a case and agree to have the case dismissed without prejudice orally before the court. The
39 plaintiff or other party seeking affirmative relief still must follow the procedures outlined in
40 subdivisions (a) and (b) even if the parties settle the case and agree to dismiss under the
41 provisions of Code of Civil Procedure section 664.6.
42

1 **Subdivision (c).** Code of Civil Procedure section 664.6 allows for but does not mandate the
2 dismissal of cases with conditional settlements either upon stipulation of the parties or on the
3 court's own motion. Subdivision (c) provides an alternative process for cases with a conditional
4 settlement where dismissal is not sought under Code of Civil Procedure section 664.6.
5

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 2024-02-22 Not approved by the Judicial Council
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 (3) Without prejudice and with the court retaining jurisdiction (Code Civ. Proc., § 664.6)**
- 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) _____

* 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

(SIGNATURE) _____

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) _____

** 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). If item 1a(3) is checked, all parties must sign.

(SIGNATURE) _____

Attorney or party without attorney for
 Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

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:
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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)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

9
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