

**Invitation to Comment**

<p>Title</p>	<p><i>Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998</i> (approve form CIV-090)</p>
<p>Summary</p>	<p><i>Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998</i> (form CIV-090) would be approved, effective January 1, 2008, as an optional form for litigants to use in making and accepting offers to compromise under Code of Civil Procedure section 998.</p>
<p>Source</p>	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p>
<p>Staff</p>	<p>Patrick O'Donnell, Committee Counsel, 415-865-7665, Patrick.o'donnell@jud.ca.gov</p>
<p>Discussion</p>	<p>Code of Civil Procedure section 998 concerns offers to allow judgment to be taken or an award to be entered in pending actions. This statute was amended effective January 1, 2006, to require that the acceptances of a judgment or award must be in writing. There is presently no Judicial Council form available either for making an offer under section 998 or for accepting such an offer.</p> <p>The public would benefit from having such a standard form available. In particular, it would assist self-represented litigants engaged in the section 998 offer and acceptance process. But the proposed form could be used by any litigants, including ones represented by counsel.</p> <p>The new Judicial Council form to implement section 998 would be optional. This would allow litigants flexibility in preparing and responding to offers to compromise; they would be able either to use the new form or to prepare their own form.</p> <p>A form similar to form CIV-090, also titled <i>Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998</i>, but designated as form CM-190, was previously circulated for public comment in the spring of 2006. Most of the comments received on form CM-190 were favorable, but a few commentators expressed concerns that the form did not sufficiently clarify the issues and consequences of offers to compromise under Code of Civil Procedure section 998.</p> <p>One concern was that the proposed form was ambiguous regarding the inclusion of attorney's fees and costs in a section 998 offer and that this</p>

ambiguity might trap unwary litigants in unanticipated outcomes. To address this concern, the Civil and Small Claims Advisory Committee has further revised item 2 of the *Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998* to clarify whether an offer of compromise includes an award or payment of attorney's fees or costs and in what amount.

The revised form is meant primarily for use in simple cases. However, as it is presently designed, it may be used in cases involving multiple parties. The form specifically includes places for identifying multiple parties. (See form CIV-090, items 1 and 3.) A question has been raised whether the form needs to be further revised to cover the situation where an offer (in item 1) is for judgment in favor of multiple parties, but the acceptance or acceptances received (in item 3) are for few than the total number of parties listed in item 1. Instead of revising the form to address this issue, an alternative approach might be to revise the entire form so that its use is limited to cases involving only two parties (that is, one plaintiff and one defendant).

Comments are invited on this revised *Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998*, particularly on (1) the sufficiency and clarity of the language regarding awards or payments of attorney's fees and costs; and (2) the use of the form in multiparty cases.

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Attachment

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>    TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>   <b>DRAFT - 02.28.07 NOT APPROVED BY THE JUDICIAL COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
<input type="checkbox"/> OFFER TO COMPROMISE AND <input type="checkbox"/> ACCEPTANCE UNDER CODE OF CIVIL PROCEDURE SECTION 998	CASE NUMBER:
<b>Note: The court will file this offer to compromise and the acceptance only if accompanied by a judgment prepared for the court's signature and entry of judgment.</b>	

**OFFER TO COMPROMISE**

1. Name *(provide the complete names of all parties making the offer):*

offers to have  judgment  an award entered under Code of Civil Procedure section 998  
 in favor of *(provide the complete names):*  
 and against *(provide the complete names):*

2. The judgment or award is to be *(check and complete a or b):*

- a.  in the amount of \$
- (1)  Each party shall bear its own costs and fees.
  - (2)  Including costs under Code of Civil Procedure section 1032 and attorney's fees.
  - (3)  Plus costs under Code of Civil Procedure section 1032.
  - (4)  Plus costs under Code of Civil Procedure section 1032 and attorney's fees in the amount of \$ \_\_\_\_\_.
  - (5)  Plus costs under Code of Civil Procedure section 1032 and attorney's fees allowed by law as determined by the court.
- b.  as follows *(describe the terms and conditions of the judgment or award):*

Continued in attachment 2b.

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY MAKING OFFER) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY MAKING OFFER)

**ACCEPTANCE OF OFFER**

3. Name *(provide the complete names of all persons accepting the offer):*

hereby accepts the offer for the judgment or award stated in items 1 and 2 above.

Date:

\_\_\_\_\_ ▶ \_\_\_\_\_  
 (NAME OF PARTY OR ATTORNEY FOR PARTY ACCEPTING OFFER) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY ACCEPTING OFFER)

## Item SPR07-17 Response Form

**Title:** *Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998 (approve form CIV-090)*

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

- Commenting on behalf of an organization**

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Camilla Kieliger,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Camilla Kieliger  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

**DEADLINE FOR COMMENT:** 5:00 p.m., Wednesday, June 20, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.*