

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-18

Title	Action Requested
Small Claims: Forms to Request Dismissal and Give Notice of Entry of Dismissal	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms SC-198 and SC-199	July 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Alan Wiener, 818-558-3051 alan.wiener@jud.ca.gov

Summary

This is a proposal for the adoption of two Judicial Council forms to be used by parties in small claims cases to request dismissals of their actions and to give notice of entry of dismissal.

Discussion

Small claims procedures are less formal than procedures for other civil actions, but are often not simple or easy for small claims litigants to correctly follow. In addition, as a result of increases in the small claims jurisdictional limit and the cost of hiring counsel, the monetary value of cases filed in small claims court is increasing, raising the stakes for all involved.

The Civil and Small Claims Advisory Committee considers forms and instruction sheets an important means of guiding litigants through the small claims process. This guidance helps to provide self-represented litigants with effective access to justice and to promote the efficient operation of the small claims court.

Code of Civil Procedure section 581(c) provides that a plaintiff may dismiss his or her complaint in any action or a special proceeding, in its entirety, or as to any defendant or defendants, with or without prejudice before the commencement of trial. And rule 3.1290 of the California Rules of Court provides that a party that requests dismissal of an action must serve on all parties and file notice of entry of the dismissal.

Currently, no Judicial Council forms are specifically designed for requesting dismissal and giving notice of entry of dismissal of small claims cases. The Judicial Council has adopted

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 These proposals are circulated for comment purposes only.

Request for Dismissal (form CIV-110) and *Notice of Entry of Dismissal and Proof of Service* (form CIV-120) for use in civil actions and proceedings. However, these forms are not ideal for use in small claims proceedings because they are not in the plain language format of other small claims forms, they do not include instructions written for self-represented litigants, and they include many references to attorneys, who may not represent parties in small claims court.

This proposal would create two new forms specifically to request and give notice of the entry of dismissal of small claims cases:

- *Request to Dismiss Claim* (form SC-198) would facilitate the dismissal of a small claims case because the claim has been settled or for any reason. Item 4 of this proposed form would solicit information about whether the matter was resolved through an agreement and, if so, how and when that agreement was reached, so that this data will be available to assess the benefits of mediation and settlement programs for small claims cases.
- *Notice of Dismissal of Claim* (form SC-199) would help litigants comply with rule 3.1390 of the California Rules of Court, which provides that a party that requests dismissal of an action must serve on all parties and file notice of entry of the dismissal.

Comments Requested

Comments are invited on all aspects of the proposal, and on the following additional question:

1. Should Judicial Council small claims forms request the parties' e-mail addresses and, if so, should the forms indicate that this information is optional?

Attachments

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Clerk stamps here when form is filed.

Not approved by the Judicial Council

Draft Rev. 4-15-11

Read the other side before you fill out this form.

① I am asking the court to dismiss a plaintiff’s claim or a defendant’s claim that I filed in this case.

My name is: _____

Mailing address: _____

Phone: _____ E-mail (optional): _____

② I am asking the court to dismiss this claim (check and complete one):

a. Completely, against all other plaintiffs and defendants

b. Against only the following plaintiffs or defendants:

(Name): _____

(Name): _____

(Name): _____

(Name): _____

(Name): _____

Check here if you are also asking the court to dismiss your claim against other plaintiffs or defendants. List their names on a separate page and write “SC-198, Item 2” at the top.

③ After this claim is dismissed (check one):

a. I want to be able to file another claim about the same facts or dispute against the plaintiffs or defendants listed in ②. (I am asking the court to dismiss my claim **without prejudice** to my filing it again if I do so by the legal deadline.)

b. I give up my right to file another claim about the same facts or dispute against the plaintiffs or defendants listed in ②. (I am asking the court to permanently dismiss my claim **with prejudice** to my filing it again.)

④ I am asking the court to dismiss this claim because I have reached an agreement with one or more of the plaintiffs or defendants listed in ②. (Check all that apply.)

a. The agreement was made through direct negotiations, without assistance from a mediator or settlement officer.

b. The agreement was made during or after a mediation or a settlement conference conducted by (check one):

(1) The court.

(2) Another organization or person.

c. The agreement was made (check one):

(1) Before the day of the small claims trial.

(2) On the day of the small claims trial.

(3) After the small claims trial.

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 your name

▶ _____
Sign here

Fill in the court name and street address:

Superior Court of California, County of

Fill in your case number and case name:

Case Number:

Case Name:

Dismissing Your Claim

If you have filed a plaintiff's claim or a defendant's claim in a small claims case, you can ask the court to dismiss your claim for any reason any time before the trial begins.

To ask the court to dismiss your claim:

- Fill out Form SC-198, *Request to Dismiss Claim*.
- Have your *Request* served on all other plaintiffs and defendants in your case. (See Form SC-112A, *Proof of Service by Mail*.)
- File your *Request* and *Proof of Service* with the small claims court clerk.

Important: Do not use Form SC-198 to dismiss a claim after a judgment has been entered or an appeal has been filed.

The court will send the plaintiff or defendant who asked to dismiss the claim a notice stating whether the claim was dismissed. That plaintiff or defendant must serve a copy of the notice on each other plaintiff and defendant in the case. (See Form SC-112A, *Proof of Service by Mail*.)

Important. The dismissal of a claim does not always resolve the entire small claims case, and a trial or hearing may still be held after some claims are dismissed.

- Only the plaintiff or defendant who has filed a claim can ask the court to dismiss that claim. If more than one plaintiff or defendant has filed a claim, the claims filed by those who do not ask the court to dismiss their claims will remain active.
- If a plaintiff or defendant has filed a claim against more than one other plaintiff or defendant, that claim will remain active against any who are not dismissed.

Answers to Common Questions

Why should I ask the court to dismiss my claim?

Some reasons you may want to dismiss your claim are:

- You have settled or resolved your disagreement.
- You have decided not to pursue your claim.
- You have not been able to locate or serve a plaintiff or defendant that you filed your claim against.

If I ask the court to dismiss my claim, can I file it again?

It depends, and the law in this area is complicated. You may want to talk with a lawyer or a small claims advisor. But, in general:

- If you dismiss your claim **without prejudice**, you can file it again if you do so within the original legal time limit (statute of limitations).
- If you dismiss your claim **with prejudice**, you cannot file another claim about the same dispute or disagreement against the same plaintiffs or defendants or against some others who are related to them.

Can I use Form SC-198 to ask the court to dismiss a claim that someone else filed?

No. Only the plaintiff or defendant who filed a claim can use Form SC-198, *Request to Dismiss Claim*, to ask the court to dismiss that claim. If you disagree with a claim filed by another plaintiff or defendant, and that party does not ask the court to dismiss it, you should go to court on the scheduled hearing date or file other papers asking the court to dismiss or transfer the case for a legal reason or to postpone the hearing.

What if only part of a claim or case is dismissed?

If a claim is not dismissed as to all plaintiffs and defendants, or if all of the claims that were filed in a case are not dismissed, the remaining plaintiffs and defendants should go to court on the scheduled hearing date.



Need help?

For free help, contact your county's small claims advisor:
[local info here]

Or go to "County-Specific Court Information" at www.courts.ca.gov/selfhelp/smallclaims

*Clerk stamps here when form is filed.***Not approved by the Judicial Council**

Draft Rev. 3-17-11

Important: The party named in ① must serve this *Notice of Dismissal* on all other plaintiffs and defendants and then file the *Notice* and *Proof of Service* with the court. (See *Form SC-112A, Proof of Service by Mail, for instructions.*)

① A *Request to Dismiss Claim* was filed:

- a. By (*name*): _____
 b. On (*date*): _____

② The claim is dismissed:

- a. Completely, against all plaintiffs and defendants
 b. Against only the following plaintiffs or defendants:

(*Name*): _____

(*Name*): _____

(*Name*): _____

(*Name*): _____

(*Name*): _____

- Against the plaintiffs and defendants listed on Attachment 2.

③ The claim is dismissed and:

- a. May be filed again, if this is done within the legal time limits. (The claim is dismissed without prejudice.)
 b. May not be filed again against the parties who were dismissed. (The claim is dismissed with prejudice.)

*Fill in the court name and street address:***Superior Court of California, County of***Fill in your case number and case name:***Case Number:****Case Name:**

Date: _____ Clerk, by _____, Deputy

Item SPR11-18 Response Form

Title: **Small Claims: Forms to Request Dismissal and Give Notice of Entry of Dismissal** (approve forms SC-198 and SC-199)

- 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: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

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