

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SPR12-11

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| Title   | Action Requested                                    |
| Small Claims: Forms to Address Default in Payment of Judgment in Installments | Review and submit comments by June 15, 2012         |
| Proposed Rules, Forms, Standards, or Statutes                                 | Proposed Effective Date                             |
| Approve forms SC-225 and SC-225A  | January 1, 2013                                     |
| Proposed by   | Contact   |
| Civil and Small Claims Advisory Committee<br>Hon. Dennis M. Perluss, Chair    | Alan Wiener, 818-558-3051<br>alan.wiener@jud.ca.gov |

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### **Executive Summary and Origin**

This is a proposal for two new optional court order forms for use when a judgment creditor has alleged a default in the payment of a small claims judgment that the court previously ordered may be paid in installments. These forms will supplement and help effectuate forms that the Judicial Council adopted and approved effective July 2010, relating to the payment of small claims judgments in installments. They will also complement two forms that the Civil and Small Claims Advisory Committee circulated for public comment in spring 2011 and is recommending the Judicial Council approve for optional use by judgment creditors and judgment debtors when a default in payment is alleged. The forms were developed in response to the suggestion of a member of the Judicial Council's Rules and Projects Committee when that committee approved circulating these two related forms for comment.

### **Background**

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 plain language 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 promotes the efficient operation of the small claims court.

*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.*

Code of Civil Procedure section 116.620 authorizes the court to order that a small claims judgment be paid in installments. Effective July 1, 2010, the Judicial Council adopted and approved five forms that address or pertain to the payment of a small claims judgment in installments. (See *Notice of Entry of Judgment* (form SC-200), *Payments in Small Claims Cases* (form SC-220-INFO), *Request to Make Payments* (form SC-220), *Response to Request to Make Payments* (form SC-221), and *Order on Request to Make Payments* (form SC-222).)

Forms SC-200 and SC-222 provide: “[i]f any payment is not made in full and on time, the judgment creditor may notify the court to cancel the payment plan, and the entire unpaid balance will become due and collectible.” There are, however, currently no forms or instructions for use by the judgment creditor to notify the court of an alleged default in payment, the judgment debtor to respond to an allegation of default, or the court to rule on the matter.

In spring 2011, the Civil and Small Claims Advisory Committee circulated for comment two proposed forms intended for use when a judgment creditor alleges a default in the payment of a judgment in installments: *Declaration of Default in Payment of Judgment* (form SC-223) and *Response to Declaration of Default in Payment of Judgment* (form SC-224). The advisory committee has recommended that the Judicial Council approve forms SC-223 and SC-224 effective January 1, 2013.<sup>1</sup>

The 2011 invitation to comment specifically asked for input about whether a form order should be developed for use when the court rules on an allegation of a default in payment of a judgment in installments. Based on the comments received, the advisory committee developed this proposal.

### **The Proposal**

*Order on Declaration of Default in Payments* (form SC-225) and *Attachment to Order on Declaration of Default in Payments* (form SC-225A) would provide optional forms for courts to use in ruling on allegations that there has been a default in the payment of a small claims judgment that the court ordered may be paid in installments. The forms would make it easier for courts to rule on these allegations and easier for self-represented litigants to understand these rulings. This proposal therefore promotes efficiency and access to justice.

Form SC-225 and form SC-225A are closely modeled after existing forms pertaining to the payment of small claims judgments in installments.

- The fields for stating the terms of the existing payment order (in item 2 of form SC-225) and any modification of that order (in item 2 of form SC-225A) are identical to the fields for setting out the terms of a payment order in item 5 of form SC-200 and item 3 of form SC-222.
- The provisions of form SC-225 also parallel those of forms SC-222, by allowing the court to grant or deny the requested relief or schedule a hearing on the matter.

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<sup>1</sup> The advisory committee has delayed submitting its recommendation concerning forms SC-223 and SC-224 to the Judicial Council for consideration so that proposed forms SC-225 and SC-225A may be submitted at the same time.

Form SC-225A is designed as an optional attachment to form SC-225, and provides spaces for the court to:

- Describe a payment order that does not conform to the fields in form SC-200 and form SC-222;
- Modify a payment order; and
- Make additional orders.

### **Alternatives considered**

The advisory committee considered incorporating the provisions of form SC-225A into form SC-225 so that there would be one new form instead of two. The committee concluded that approving form SC-225A for use as an optional attachment is preferable because the items it contains will usually not be necessary and separating them makes form SC-225 a simpler, one-page form.

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

The approval of optional forms SC-225 and SC-225A should not result in any implementation requirements or costs and should reduce the time required for courts to rule on allegations of a default in the payment of a small claims judgment in installments.

## **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:

- Will the proposal provide cost savings? If so, please quantify.
- What are the implementation requirements 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 system, or modifying case management system.
- Would two 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**

Proposed forms SC-225 and SC-225A, at pages 4–5

*Clerk stamps here when form is filed.*

**Not approved by the Judicial Council**

**DRAFT Rev. 3-27-12 AW**

(as proposed by Small Claims and Limited Cases Subcommittee)

*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:**

① A judgment was entered in this case on (date): \_\_\_\_\_ against (name of judgment debtor): \_\_\_\_\_

② On (date): \_\_\_\_\_, the court ordered that the judgment debtor named in ① may pay the judgment as follows:

a.  Payments of \$ \_\_\_\_\_, on the \_\_\_\_\_ day of each (month, week, other): \_\_\_\_\_ starting (date): \_\_\_\_\_ until (date of final payment): \_\_\_\_\_ amount of final payment: \$ \_\_\_\_\_

b.  The payment schedule is stated on Form SC-225A, item ①.

③ On (date): \_\_\_\_\_ the judgment creditor (name): \_\_\_\_\_ informed the court that the judgment debtor had not made one or more payments as provided in ② and asked the court to order that the remaining balance of the judgment is due and collectible.

④  On (date): \_\_\_\_\_ the judgment debtor filed a response to the judgment creditor's request.

**The court orders:**

⑤  **The payment order referred to in ② (check one):**

- a.  is terminated and the balance of the judgment is collectible.
- b.  remains in effect, without modification.
- c.  is modified as stated on Form SC-225A, item ②.

⑥  **The following amounts are owing on the judgment as of (date):** \_\_\_\_\_

- a.  Principal balance of judgment and costs included in judgment (amount): \$ \_\_\_\_\_
- b.  Interest (amount): \$ \_\_\_\_\_

⑦  **Other orders are stated on Form SC-225A, item ③.**

⑧  **The court will make orders on the matter after a hearing, which will take place on:**

**Hearing Date** → \_\_\_\_\_ Time: \_\_\_\_\_ Dept. \_\_\_\_\_

*Name and address of court if different than address above:*



**Request for Accommodations** Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Response* (Form MC-410). (Civil Code, § 54.8)

Date: \_\_\_\_\_

\_\_\_\_\_  
*Judicial officer*



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