

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SPR12-10

Title	Action Requested
Small Claims: Form to Dismiss and Give Notice of Entry of Dismissal	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve form SC-198	January 1, 2013
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Alan Wiener, 818-558-3051 alan.wiener@jud.ca.gov

Executive Summary and Origin

This is a proposal for a new Judicial Council form, *Dismissal and Notice of Dismissal of Claim* (form SC-198), for a small claims litigant to voluntarily dismiss a claim, for the court to indicate whether the dismissal was entered, and for the court or the litigant to notify other parties of the dismissal. The Civil and Small Claims Advisory Committee originated this proposal as part of an initiative to promote and facilitate the voluntary settlement and dismissal of small claims proceedings.

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 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. Rule 3.1390 of the California Rules of Court requires that a party who requests dismissal of an action serve on all parties and file notice of entry of the dismissal.

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 These proposals are circulated for comment purposes only.

There are currently no Judicial Council forms specifically for dismissing and giving notice of entry of dismissal of small claims cases. The council has adopted *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, 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.

Prior Circulation

Two separate forms relating to the voluntary dismissal of small claims cases were circulated for comment in spring 2011. The first form, *Request to Dismiss Claim*, would have been completed and filed by a plaintiff or defendant who is dismissing a claim. The second form, *Notice of Dismissal of Claim*, would have been completed by the clerk, to indicate whether the dismissal had been entered, and returned to the party who dismissed the claim, for service on the other parties in accordance with rule 3.1390. After considering the public comments, the advisory committee concluded that it would be preferable to have a single form for a small claims litigant to dismiss a claim, the court clerk to indicate whether the dismissal was entered, and the clerk or the litigant to notify other parties of the dismissal.

The Proposal

The advisory committee proposes adopting form SC-198 as an alternative mandatory form to facilitate the voluntary dismissal of claims filed in the small claims court before the commencement of trial. The form would promote efficiency and access to justice by making it easier for self-represented litigants to dismiss these claims and for courts to indicate whether the dismissal was entered and whether the trial was taken off calendar or remains scheduled.

More specifically, form SC-198 would:

- Provide information and instructions about dismissing a claim filed in the small claims court;
- Provide a user-friendly form for self-represented litigants to voluntarily dismiss a claim before the commencement of trial;¹
- Allow court clerks to conveniently indicate whether the dismissal was entered and, if not, why not;
- Allow court clerks to conveniently indicate whether the previously scheduled hearing (trial) is canceled or remains on calendar; and
- Allow court clerks to conveniently certify service of the form.

¹ Form SC-198 would state that the party is dismissing his or her claim, rather than asking the court to dismiss the claim, because Code of Civil Procedure section 581(c) allows a party to dismiss a complaint (as distinguished from an action) any time prior to the commencement of trial, which is the intended use of this form.

The committee proposes adopting form SC-198 for alternative mandatory use because *Request for Dismissal* (form CIV-110) is an existing mandatory form. Although form CIV-110 is not well suited for use in small claims cases, litigants could continue to use that form if they preferred.

Form SC-198 includes optional spaces for the court clerk to certify that the form was mailed to the party who filed the dismissal or to other parties. Although rule 3.1390 provides that the party who requests a dismissal must serve the notice of entry of the dismissal on all other parties, the advisory committee observed that small claims litigants may not know of or follow this requirement. The committee therefore concluded it would be beneficial to provide courts that choose to serve the other parties with a space to conveniently certify that they have done so.

Alternatives considered

As noted above, the advisory committee previously circulated separate forms for dismissing a claim and giving notice of the dismissal. Separate forms were initially proposed because multi-purpose forms that are first completed and filed by litigants and then further completed and distributed by courts are difficult for modern case management systems to process. In this instance, however, the committee concluded it was more important to avoid the need for courts and litigants to enter the same information about the dismissed claim on two different forms.

Implementation Requirements, Costs, and Operational Impacts

The advisory committee anticipates that approval of form SC-198 would result in only the minimal costs associated with providing copies of the form, for those courts that provide small claims forms to litigants, and would reduce the time that courts spend answering litigants' questions about the dismissal of claims filed in the small claims court.

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 the “Answers to Common Questions” on page 2 of form SC-198 explain what will occur if a plaintiff dismisses his or her claim by completing and submitting items 1 through 5, but the clerk checks item 7, indicating that the dismissal was not entered? If so, please provide any explanation that you suggest including.

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

1. Form SC-198, at pages 5-6

Clerk stamps here when form is filed.

Not approved by the Judicial Council

Draft Rev. 3-27-12

Read the other side before you fill out this form.

1 I am dismissing a claim that I filed in this case. My name is: Mailing address: Phone: E-mail (optional):

2 I am (check one): a. a plaintiff who filed a claim against a defendant (Form SC-100) b. a defendant who filed a claim against a plaintiff (Form SC-120)

3 My claim is set for hearing on (date):

4 I am dismissing my claim (check one): a. In full, against all plaintiffs and defendants b. Against only the following plaintiffs or defendants (list all that apply):

(Name): (Name): (Name):

5 I am dismissing my claim against the plaintiffs or defendants listed in 4 (check one): a. without prejudice. The claim may be filed again if this is done within the legal time limits. b. with prejudice. The same claim may not be filed again.

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

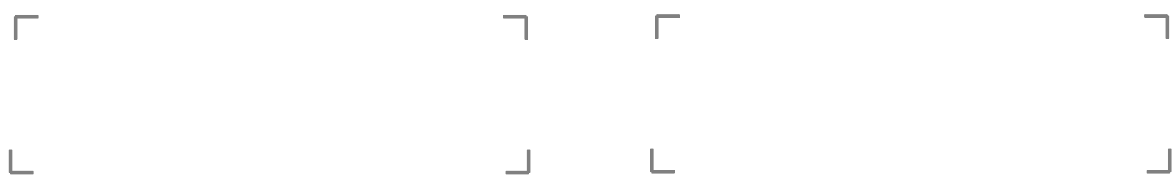
Date:

Type or print your name

Sign here

TO BE COMPLETED BY COURT CLERK

- 6 The dismissal was entered as stated above on (date):
7 The dismissal was not entered as stated above because
8 The hearing (trial) previously scheduled for (date): at (time):
a. is canceled
b. remains on the court's calendar
9 I certify that I am a clerk of the Superior Court of California, County of; that I am not a plaintiff or defendant in this case; and that a copy of this form was mailed following standard court practices in a sealed envelope with postage fully prepaid, on (date), from (city), California, as follows (check and complete all that apply):
a. To the plaintiff or defendant who dismissed the claim, at the address stated in 1.
b. As follows:



Date: Clerk, by, Deputy

Dismissing Your Claim

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

To dismiss your claim:

- Fill out items ① through ⑤ on Form SC-198, *Dismissal and Notice of Dismissal of Claim*.
- File Form SC-198 with the small claims court clerk.

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

If the court approves the Form SC-198, the clerk will enter the dismissal in the court records as requested and complete item ⑥. If the court does not approve the dismissal, the clerk will state the reason in item ⑦. In either case, the clerk will complete item ⑧, stating whether the hearing (trial) is canceled or remains on the court's calendar, and will mail the completed Form SC-198 to the plaintiff or defendant who filed the form. That plaintiff or defendant must then serve a copy of the completed Form SC-198 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 hearing (trial) may still be held after some claims are dismissed.

- Only the plaintiff or defendant who filed a claim can dismiss that claim.
- Each plaintiff or defendant who is dismissing a claim should file a separate Form SC-198.
- If more than one plaintiff or defendant has filed a claim in a case, the claims filed by those who do not 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.
- If all claims that have been filed are completely dismissed, the small claims trial will be taken off the court's calendar and the small claims case will be closed.
- If any claims that have been filed are not completely dismissed the small claims trial will stay on the court's calendar for the date most recently scheduled.

Answers to Common Questions

Why would I 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 dismiss my claim, can I file it again later?

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 it again.

May I use Form SC-198 to dismiss a claim that someone else filed against me?

No. Only the plaintiff or defendant who filed a claim may use Form SC-198, *Dismissal and Notice of Dismissal of Claim*, to dismiss that claim. If you disagree with a claim filed by another plaintiff or defendant and that party does not dismiss it, you should go to court on the scheduled hearing (trial) date.

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 some 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