



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

Title	Agenda Item Type
Civil Cases: Continued Suspension of Case Management Rules	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend. Cal. Rules of Court, rule 3.720	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Patricia M. Lucas, Chair	October 8, 2015
	Contact
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that a statewide rule of court on civil case management be amended to further extend the period during which courts have discretion to exempt certain types or categories of civil cases from the mandatory case management rules. The 2013 amendments to rule 3.720 were intended to help courts better address the state's fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. In light of the continuing fiscal crisis, the Civil and Small Claims Advisory Committee recommends a four-year extension of the discretion to grant such exemptions.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend rule 3.720 of the California Rules of Court, effective January 1, 2016, to extend until January 1, 2020, the period during which courts, by local rule, may exempt certain categories of general civil cases from the mandatory case management rules.

The text of the proposed amendment to the rule is attached at page 8.

Previous Council Action

Pursuant to the Trial Delay Reduction Act,¹ in 2001, the Judicial Council approved a major revision of civil case management rules,² to modernize case management practices, establish greater uniformity, and promote good case management.³ One of the major substantive changes approved was the addition of new requirements for individualized case management review in all general civil cases,⁴ within 180 days of the filing of the complaint, with specified exceptions, and that a case management conference be conducted in all applicable unlimited civil cases unless the court found it unnecessary.⁵

The case management rules have not been substantively amended since 2001. They were renumbered in 2007 as part of an overall rules reorganization. In 2009, an amendment added a new topic—issues relating to discovery of electronically stored information—to the list of items about which parties must meet and confer before the case management conference.⁶ Other than those amendments, the case management rules remained the same until 2013, with courts holding individual case management conferences in all applicable unlimited general civil cases and performing individual case management review (although generally not holding conferences) in all limited general civil cases.⁷

In 2013, following requests from the superior courts in Los Angeles and Sacramento, the Judicial Council amended rules 3.712 and 3.720. The amendments authorized courts to adopt local rules exempting specified types or categories of general civil cases from mandatory case management rules if they had alternative procedures in place for case processing and trial setting for those cases.⁸ The amendments were intended to be temporary, applying only to cases filed before January 1, 2016. The purpose was to help courts in addressing the current fiscal crisis by decreasing the time that court staff and judicial officers spent in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules.

¹ Gov. Code, § 68600 et seq.

² All references to rules in this report are to the California Rules of Court, unless otherwise noted.

³ Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Case Management* (Dec. 7, 2001), p. 3; *id.*, mins. (Dec. 18, 2001), pp. 16–18.

⁴ See rule 1.6(4) (“ ‘General civil case’ means all civil cases” except probate, guardianship, conservatorship, juvenile, family law, small claims, and unlawful detainer proceedings, and certain civil petitions).

⁵ See rules 3.721 and 3.722 (formerly rule 212(a), (b)).

⁶ See rule 3.724(8).

⁷ Rule 3.722(e) authorizes courts to provide by local rule that counsel and parties need not attend case management conferences in limited civil cases.

⁸ Judicial Council of Cal., Civ. & Small Claims Advisory Com. Rep., *Civil Cases: Temporary Suspension of Case Management Rules* (Jan. 31, 2013); *id.*, mins. (Feb. 26, 2013), p. 8.

Rationale for Recommendation

Most courts throughout the state have not implemented local rules adopting exemptions from case management rules as authorized by rule 3.720. But at least six courts have implemented local rules adopting exemptions, suspending the mandated case management procedures for some or all of the general civil cases in their court. Other courts may wish to do so if the rule is amended to extend the sunset date until January 1, 2020.⁹

The Superior Court of Los Angeles County is one of the six that has exercised the temporary discretion afforded under rule 3.720.¹⁰ It reports that it has exempted all general civil personal injury cases (more than 16,000) and also all limited civil cases from the case management rules, after determining that those cases typically required fewer appearances and less direct case management than other general civil cases. Taking this step allowed the court to consolidate the pretrial handling of cases. Attorneys and the public reportedly have endorsed the action, and it has produced substantial savings, because fewer court appearances and filings are required and fewer courtrooms require staffing.

The Superior Court of Shasta County reported a similar experience. By exempting all limited and unlimited civil cases from the case management rules,¹¹ it was able to combine two civil departments into one, freeing the other to assist in alleviating expanding family law calendars. The court reports that the changes have been embraced by local civil and family law attorneys and have produced sufficient savings in staff resources that it may be possible to restore clerks' office hours for the public in the new fiscal year. Both courts report that continuation of the discretion afforded by the temporary amendment to rule 3.720, allowing exemptions from the case management rules, is critical to their functioning in light of ongoing funding reductions.¹²

Although individualized case management conferences have been considered the best practice for a court's oversight of the pace of civil litigation for more than 10 years, under current budgetary constraints it is not possible for all courts to employ optimal case management practices. Extending the period during which courts may exempt certain cases from mandated case management procedures will allow courts the continued flexibility to determine whether they can more effectively manage their civil cases overall, with current limited resources, by

⁹ Although courts have seen modest budget increases recently, they continue to manage nearly \$290 million in ongoing reductions.

¹⁰ See Super. Ct. L.A. County, Local Rules, rule 3.23 ("Exemption From Case Management Rules").

¹¹ See Super. Ct. Shasta County, Local Rules, rule 3.02 ("All Purpose Assignment; Exemption From Case Management Conference").

¹² The Monterey, Sacramento, San Bernardino, and San Joaquin courts also report having exercised the temporary discretion afforded under rule 3.720. (See Super. Ct. Monterey County, *Alternative to Civ. Case Management*, www.monterey.courts.ca.gov/Documents/Civil/2013-Alternative-to-Civil-Case-Management.pdf [exempting all civil cases]; Super. Ct. Sacramento County, Local Rules, rules 2.21, 2.52 [all limited and short cause civil cases]; Super. Ct. San Bernardino County, Local Rules, rule 411 [all general civil cases and complex cases]; Super. Ct. San Joaquin County, Local Rules, rule 3–102.A.6.)

eliminating individualized case management conferences and review for some types of cases. Having the ability to do so will free court staff from filing and processing case management statements and scheduling case management conferences, and will decrease judicial officer time spent reviewing cases and holding conferences.

At the same time, the mandates of the Trial Delay Reduction Act remain in effect and courts remain responsible for overseeing the progress of cases before them, eliminating delay in the progress and ultimate resolution of litigation. The proposed amendment would retain the provision, added to rule 3.720 in 2013, requiring that courts have an alternative method in place for processing civil cases and to ensure trial dates are set.

Comments, Alternatives Considered, and Policy Implications

Comments received

This proposal was circulated for public comment from April 17 to June 17, 2015. In addition to asking for general comments on the appropriateness of the proposed amendment, the committee specifically asked whether four years was an appropriate period for the proposed extension. The committee also asked courts for input on the following cost and implementation matters:

- Whether the proposal would provide cost savings;
- What steps would be required to implement the proposal;
- Whether two months would provide sufficient time for implementation; and
- How well the proposal would work in courts of different sizes.

Seven comments were received, with commentators including four courts, one county bar association, the California Judges Association (CJA), and the Joint Rules Subcommittee of the Judicial Council’s Trial Court Presiding Judges and Court Executives Advisory Committees (Joint Rules Subcommittee). All agreed with the proposal. A chart summarizing all comments and the committee’s responses is attached at pages 9–16.

Comments generally supporting the proposal. As noted, all of the commentators supported the proposal. CJA relayed that, with only one dissent, its membership overwhelmingly supported the proposal. The consensus was that it would allow individual courts discretion, in “uncertain financial times,” to adopt alternative procedures for case processing (for example, relying on telephone status conferences instead of case management conferences). The Joint Rules Subcommittee observed that the proposal would allow courts “to modify or streamline their civil case management process to reflect their economic and staffing realities,” and expressed appreciation that the proposal retained discretion for courts in this area, making the provision voluntary.

The Superior Court of Los Angeles County reported that it “strongly support[s]” the proposal, and considers approval of the proposal to be “critical” to the court’s functioning. The Superior Court of Shasta County also “urges” approval of the proposal because it will give all courts “the flexibility necessary to make independent administrative and operational decisions that are best

suited for each respective court.” The Shasta court noted that it particularly needs this flexibility because it has significantly fewer staff (41.5 vacant support staff positions) and a dramatically increased number of criminal, family law, and traffic filings.

Length of the extension. Five commentators specifically responded to the question about whether four years would be an appropriate extension of the temporary discretion to exempt certain categories of cases from case management rules (i.e., the Los Angeles and San Diego courts, the Joint Rules Subcommittee, the bar association, and CJA). All agreed that four years would be an appropriate period. The bar association noted that four years would allow other courts time to evaluate and implement the temporary provision, by adopting a local rule. A four-year period, the bar association observed, also would allow courts and parties to evaluate the results in terms of management of court time and resources and the effect of the exemption for certain types of cases.

CJA reported that, with one exception, its membership overwhelmingly supported either the proposed four-year extension or eliminating the sunset provision altogether. The committee has concluded that extending the sunset date by four years would be the best course as it would provide all courts further time to use the temporary provision in dealing with the continuing fiscal crisis. It also would allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.

Cost savings. Four commentators specifically responded to the question about whether the proposal would provide court savings, all agreeing that it would do so. The Joint Rules Subcommittee commented that the proposal would reduce costs because fewer court staff would be required. The bar association concurred, observing, as noted, that case management conferences generally “are time-consuming” for litigants and courts, and do not appear to improve case management.

The Los Angeles court reported that it has realized “substantial savings” as a result of the discretion that the proposal would preserve, as the court is able to handle cases with “far fewer appearances,” fewer filings are required, and fewer courtrooms require staffing. The Shasta court reported that the temporary provision had allowed it to condense two dedicated civil law and motion departments into a single department, freeing the other department to help alleviate an “ever-increasing family law calendar.” The court has been able to reassign support staff to areas of more critical need. If the proposal is adopted, the Shasta court anticipates the resulting savings may allow it to restore services to the public by expanding the civil clerks’ office hours.

Effective date of the proposed rule change. Two commentators, the Joint Rules Subcommittee and the Superior Court of Los Angeles County, responded to the specific question about whether a two month period between council approval and the effective date of the rule change would be sufficient. Both agreed that two months would suffice.

Courts of different sizes. Two commentators, the Joint Rules Subcommittee and the Superior Court of Shasta County, responded to the specific question about whether the proposal would work well in courts of different sizes. The Joint Rules Subcommittee commented that it would work “very well” because courts could exercise discretion in implementing it according to their individual needs. The Shasta court agreed, observing that the proposal would “provide courts throughout California with the flexibility” to make “independent administrative and operational decisions” best suited for their individual circumstances.

Alternatives considered

Before circulating the proposal for comments, the advisory committee considered the alternative of taking no action to extend the sunset date stated in the rule. It concluded, however, that several courts are relying on the flexibility that the temporary provision affords to manage the fiscal crisis and very much wanted to continue doing so.

The committee also considered the appropriate length of time for the extension of the sunset date, and concluded that four years was appropriate. Four years would provide courts—including recent adopters¹³—sufficient time to realize the benefits afforded by the temporary provision. It also would allow the committee time to consider whether it should propose other ongoing changes to case management rules.

Implementation Requirements, Costs, and Operational Impacts

If approved, this proposed rule change would not require any action and should not raise any costs or place any operational impacts on the courts. The proposal would retain for courts the discretion to exempt certain types or categories of general civil cases from the case management rules. A court would only avail itself of the option if it determined that doing so would assist it in better managing its resources. As the Joint Rules Subcommittee observed in its comments, if the proposal is approved, a court would only need to amend its local rules and provide notice to the local bar to avail itself of the alternative that it allows. The Los Angeles and Shasta courts both observed that they already had taken the necessary steps and do not anticipate approval of the proposal would require further action on their parts. The committee observes that rule 10.613(i) offers a method for expediting changes to courts’ local rules, if good cause exists, and that this may allow courts still wishing to do so, to implement the proposed rule change without significant delay.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendation falls within the ambit of Strategic Plan Goal III: Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting “innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases.”¹⁴ It also is consistent with the Operational Plan,

¹³ The Superior Court of Shasta County, for example, reportedly just took the requisite action last fall.

¹⁴ Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California’s Judicial Branch 2006–2016* (Dec. 12, 2014), p. 20.

Objective 5: “Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”¹⁵

Attachments

1. Cal. Rules of Court, rule 3.720, at page 8
2. Chart of comments, at pages 9–16

¹⁵ Judicial Council of Cal., *The Operational Plan for California’s Judicial Branch, 2008–2011*, p. 12.

California Rules of Court, rule 3.720 would be amended, effective January 1, 2016, to read:

1 **Rule 3.720. Application**

2

3 (a) * * *

4

5 (b) **Emergency suspension of rules**

6

7 A court by local rule may exempt specified types or categories of general civil cases filed
8 before January 1, ~~2016~~2020, from the case management rules in this chapter, provided that
9 the court has in place alternative procedures for case processing and trial setting for such
10 actions, including, without limitation, compliance with Code of Civil Procedure sections
11 1141.10 et seq. and 1775 et seq. The court must post the alternative procedures on its
12 website.

13

14 (c) * * *

15

16 **Advisory Committee Comment**

17 Subdivision (b) of this rule is an emergency measure in response to the limited fiscal resources available
18 to the courts as a result of the current fiscal crisis and is not intended as a permanent change in the case.

SPR15-10**Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association by Joan P. Weber, President	A	<p>In 2013, the Judicial Council amended the statewide rules of court on civil case management to give courts the discretion to exempt certain types or categories of general civil cases from the mandatory case management rules. (Rule 3.720) The amendments were an emergency measure, intended to help courts to better address the state’s fiscal crisis by decreasing the time spent by court staff and judicial officers in filing case management statements, setting and holding individual case management conferences, and performing other actions required by the case management rules. The exemption provided in the rule was intended to be temporary, and by the terms of the amended rule applies only to cases filed before January 1, 2016. The proposal would extend the exemption in light of the continuing fiscal crisis.</p> <p>With the exception of one dissenting opinion, the overwhelming response was that Rule 3.720 should either be extended or amended with no sunset provision. As to those expressing support for the extension, all voiced support for the proposition that in these uncertain financial times each Court should have the ability and the discretion to suspend the CMC rules so long as alternative procedures are available for case processing. The TSC has proven to be a more appropriate case management tool.</p> <p>California Judges Association supports extending the rule or making it permanent.</p>	<p>The committee notes the commentator’s support for extending or eliminating the sunset date provided in rule 3.720(b). The committee concluded that a four-year extension was appropriate. This will provide courts further time to use the temporary provision in dealing with the fiscal crisis, including courts that just recently adopted a local rule or that may have been considering whether to do so. It also will allow the committee sufficient time to consider whether further changes should be recommended to the case management rules.</p>

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	Commentator	Position	Comment	Committee Response
2.	Orange County Bar Association By Ashleigh Aitken, President	A	<p>The proposal adequately addresses the stated purpose and/or goal. This will save time and resources for courts which will be better spent elsewhere. CMCs are generally time-consuming for all parties, courts and staff, do not appear to result in greater case management by the courts and parties, and create unnecessary expense.</p> <p>The four-year time period appears to be appropriate for continuing the emergency exemption. This time period will allow the courts to continue to evaluate and implement the exemption. The time will further allow the courts and parties to determine how utilizing the exemption affects the court's time and resources and how it affects (if it does at all) the management of certain cases.</p>	The committee notes the commentator's agreement with the proposal.
3.	Superior Court of Los Angeles County	A	<p>We strongly support the advisory committee's proposed extension until 2020 of the exemption from the case management rules found in Rule 3.720 of the California Rules of Court. This exemption in 2012 has allowed the Los Angeles Superior Court to address the fiscal crisis that we faced and still face while still meeting our obligations to the public. Following this exemption, and in compliance with our local rule 3.23, the Court exempted general civil personal injury cases from the case management rules. These cases currently are consolidated in four courtrooms for all pretrial matters, whereas far more courtrooms would be needed to handle them without the exemption. The feedback that our Court has received from the bench, bar,</p>	The committee notes the commentator's support for the proposal.

SPR15-10**Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)**

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	Commentator	Position	Comment	Committee Response
			<p>and the general public is positive with an acceptance and an approval of the management of these cases. The exemption has resulted in substantial savings in that we are able to handle these cases with far fewer court appearances, filings, and staffed courtrooms.</p> <p>The committee asks whether four years is appropriate for the extension. We believe that it is. The committee has also asked whether there would be implementation requirements, and whether two months would be sufficient for implementation. Because we already are functioning with the exemption, there would be no new implementation requirements, and no time is needed for implementation.</p> <p>The continuation of the exemption is critical to our Court's functioning, and we are grateful that the advisory committee is considering recommending its continuation.</p>	
4.	Superior Court of Riverside County	A	No specific comment.	The committee notes the commentator's agreement with the proposal.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Is four years an appropriate period for extending the emergency exemption? Yes.</p>	The committee notes the commentator's agreement with the proposal.
6.	Superior Court of Shasta County by Hon. Gregory S. Gaul	A	Shasta County Superior Court (hereinafter "Court") employed two hundred (200) employees prior to 2008. As budget cuts began being imposed in 2008, the Court realized that	The committee notes the commentator's agreement with the proposal.

SPR15-10**Civil Cases: Continued Suspension of Case Management Rule** (amend rule 3.720)

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	Commentator	Position	Comment	Committee Response
			<p>all vacant positions would need to remain unfilled, unless essential to keeping courtrooms open to the public, or as required for public safety within the courthouse. Despite exploring all available cost-cutting measures, including employee furloughs, the Court was faced with reducing services to the public. This included closure of the clerks' offices at 2:00 p.m. each day and closing the branch court located in Burney, California.</p> <p>At the end of fiscal year 2013/2014, the Court had more than thirty vacant employee positions, but was still faced with making tough decisions to address the projected 2014/2015 fiscal year budget shortfall. In June 2014, the Court was forced to lay off support staff for the first time in the Court's history. As a result, the Court currently has 41.5 vacant support staff positions. Despite a dramatic increase in criminal, family law, and traffic filings, the Court was, and is currently performing an increasing workload with more than twenty percent (20%) fewer employees. The resulting increase in workload, being performed by less people, meant the Court needed to have flexibility in making the best administrative and operational decisions for our specific Court.</p> <p>One solution to this dilemma was the Court's decision to suspend the use of civil case management conferences for all limited and unlimited civil cases, which has allowed our court to condense two dedicated civil law</p>	

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Civil Cases: Continued Suspension of Case Management Rule (amend rule 3.720)

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	Commentator	Position	Comment	Committee Response
			<p>departments into one. A significant operational benefit from this change is that a courtroom was freed up to be available to assist in alleviating the ever-increasing family law calendars. More importantly, this change allowed the court to reassign support staff to areas of more critical need.</p> <p>The Court held brown bag meetings with the civil bar before and after the January 1, 2015 suspension of case management conferences. These changes have been implemented without negative repercussions, and they have been both welcomed and embraced by the local civil and family law attorneys.</p> <p>Significantly, from a budgetary point of view, the suspension of case management conferences has resulted in the elimination of two case management conference calendars, the support staff necessary to process case management conference filings, the support staff necessary to pull and return the files for cases that were previously calendared for case management proceedings, and the research attorney time spent reviewing and preparing the files for a judicial officer.</p> <p>The primary goal of our Court during fiscal year 2015/2016, will be to restore services to the public upon any receipt of restored funding. This will include expanding the civil clerk's office hours to the public. However, the saving of staff resources realized through the</p>	

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	Commentator	Position	Comment	Committee Response
			<p>suspension of civil case management conferences is essential to the Court’s desire to increase the hours of public access to court services.</p> <p>Shasta County Superior Court urges the Judicial Council to approve the proposed amendment to California Rules of Court, Rule 3.720(b), to provide that the emergency suspension of the case management rules currently scheduled to sunset in 2016, be amended to sunset in 2020. Such an amendment will provide courts throughout California with the flexibility necessary to making independent administrative and operational decisions that are best suited for each respective court.</p>	
7.	<p>Judicial Council Trial Court Presiding Judges and Court Executives Advisory Committee By Joint Rules Subcommittee (JRS)</p>	A	<p>The JRS identified the following fiscal/operational impact on the trial courts:</p> <ul style="list-style-type: none"> • Significant positive fiscal impact; and • Requires development of local rules and/or forms. <p>This proposal would allow courts to modify or streamline their civil case management process to reflect their economic and staffing realities.</p> <p>The original rule required courts to enact a new local rule, and not all courts have done that because of the lead time involved. The proposed extension will allow courts to better assess their capacity and make appropriate local rule</p>	<p>The committee notes the commentator’s agreement with the proposal.</p>

SPR15-10

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	Commentator	Position	Comment	Committee Response
			<p>changes.</p> <p>The subcommittee appreciates that the exemption of specified types or categories of general civil cases filed before January 1, 2020, from the case management rules in this chapter remains voluntary and at the courts’ discretion.</p> <p>The following are responses to the proposal’s Request for Specific Comments:</p> <p>Does the proposal appropriately address the stated purpose? <i>Yes.</i></p> <p>Is four years an appropriate period for extending the emergency exemption? <i>Yes.</i></p> <p>Would the proposal provide cost savings? If so please quantify. <i>Yes. Fewer staff would be required if a court opts out of some or all of the civil case management process.</i></p> <p>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? <i>Implementation requirements would include a local rule change and a notice to the local bar.</i></p> <p>Would two months from Judicial Council approval of this proposal until its effective date</p>	

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	Commentator	Position	Comment	Committee Response
			provide sufficient time for implementation? <i>Yes.</i> How well would this proposal work in courts of different sizes? <i>Very well. Courts can adapt it to meet their own needs.</i>	