

Creditors' Rights: Laws Change to Reflect Realities of Collections Cases

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On July 1, 2007, California Rules of Court, Rules 3.740 and 3.741, became effective, making it easier for creditors to prosecute collections cases.

In an ordinary civil case under Fast Track rules, a plaintiff's counsel must: (a) file, within 60 days of filing suit, proof that the defendant has been served with the summons and complaint; and (b) appear at a case management hearing before a judge who will likely be intent on issuing an order for such things as discovery completion, mediation, and a fast-tracked trial date.

But in most collections cases, the work is less in case management, and more in finding and serving the deadbeat defendants, which often takes longer than 60 days, thereby subjecting the plaintiff to round-robin Order to Show Cause hearings regarding sanctions for not moving quicker.

Now plaintiffs have 180 days to file the proof of service or obtain an order for service by publication, and are exempt from the Fast Track case management rules. (Rule 3.740(c) and (d).)

Several other enhancements for creditors include: (a) a cushion of 360 days to obtain a default judgment (Rule 3.740(e)); and (b) the right to have the trial and any other calendared dates mandatorily vacated upon filing a notice of settlement, even a conditional settlement (Rule 3.741).

Among the catches, two of the main ones are:

- If the defendant appears and contests the matter, the usual case management rules become effective; and
- Cases involving a principal balance over \$25,000 remain subject to the normal Fast Track rules (Rule 3.740(a)).

In sum, it is now more cost-effective for creditors to bring most kinds of limited jurisdiction collections cases.