Pretrial Procedures in Riverside Superior Court

How the Unlimited Civil Departments Work and What Is Expected of You

CONTENTS

A. PRETRIAL PROCEEDINGS

1. This document describes how your department is likely to conduct case management hearings and other pretrial proceedings, but each of the twelve trial departments has the discretion to adopt its own practices. If there is any conflict between this document and procedures posted by the department to which your case is assigned, defer to those department-specific procedures.

B. CASE MANAGEMENT IN GENERAL

1. "Case management" includes:
   a. Case management conferences ("CMCs"), trial setting conferences ("TSCs"), and trial calls, and motions, ex parte applications, and stipulations to continue any such proceedings.
   b. Orders to show cause ("OSCs") for failures to serve, failures to request entry of default, failures to file case management statements, failures to appear at TSCs or trial calls, failures to comply with local rules, etc.

c. Motions under Code of Civil Procedure sections 473 or 1008 challenging any rulings made concerning any such proceeding, motion, application, or OSC.

2. When engaging in case management, the Court's goals are:

   a. To conduct as few CMCs, TSCs, and hearings on OSCs as possible;

   b. To set a TSC or to order a case to mediation or arbitration at the *first* CMC;

   c. To set a trial date at the *first* TSC;

   d. To set trial dates within *six months* of the TSC; and

   e. To set *firm* trial dates.

3. To achieve these goals, the Court needs and expects cooperation from counsel. In particular:

   a. The Court needs counsel to comply with counsel's obligations under California Rules of Court, rule 3.110, regarding service of process and entry of default.

   b. The Court needs counsel to comply with counsel's obligations under rule 3.725 regarding CMSs.

   c. The Court needs counsel to observe the limitations under rule 3.1332 regarding continuances of trials.

   d. If the Court issues an OSC, the Court needs counsel to comply with Riverside Superior Court Local Rule 3116, concerning declarations in response to OSCs.

4. When a party or its counsel appears to have failed to comply with one or more of those rules, the Court is likely to issue an OSC why the party or its counsel should not be sanctioned, either monetarily or through the dismissal of the action. If a party or counsel named in the OSC does not demonstrate either that the citee did comply or that good cause exists for the failure to comply, the Court is likely to impose those sanctions to encourage compliance both by the citee and by others in the future.

C. SERVICE OF SUMMONS AND COMPLAINT

1. California Rules of Court, rule 3.110(b), requires plaintiff's counsel to serve all defendants and to file all proofs of that service within 60 days of the filing of the complaint.

   a. The Court expects counsel to comply this rule. The failure to comply may result in an order to show cause why sanctions should not be imposed, in the continuance of the case management conference, or in both.

b. Counsel should not delay service of the complaint merely because counsel expects to file an amended complaint. The filing of an amended complaint does not excuse the failure to comply with rule 3.110(b).

2. California Rules of Court, rule 3.110(c), requires cross-complainant's counsel to serve all cross-defendants and to file all proofs of that service within 30 days of the filing of the cross-complaint. The Court expects counsel to comply with this rule. The failure to comply may result in an order to show cause why sanctions should not be imposed, in the continuance of the case management conference, or in both.

D. DEFAULTS AND EXTENSIONS OF TIME TO RESPOND

1. California Rules of Court, rule 3.110(d), limits the authority of plaintiffs and cross-complainants to grant extensions of time in which to file responsive pleadings to a maximum of 15 days. The Court expects counsel to comply with this rule. "Open extensions" to respond are not permitted.

2. No plaintiff or cross-complainant should extend time for the filing of responsive pleadings to any date less than 15 days before a scheduled case management conference.

3. California Rules of Court, rule 3.110(g), requires plaintiffs and cross-complainants to request entry of default no later than 10 days after the time for service of the responsive pleading has elapsed. The Court expects counsel to comply with this rule. The failure to comply may result in the issuance of an order to show cause why sanctions should not be imposed, in the continuance of the case management conference, or in both.

E. CASE MANAGEMENT HEARINGS IN GENERAL

1. The Court reviews its calendar one to three court days in advance. As the result of that review, all hearings – especially CMCs and hearings on OSCs – are subject to being vacated, continued, or reassigned to a different department on short notice. Minute orders implementing any such changes will generally be entered and the online docket updated by 3:00 P.M. one court day prior to the scheduled hearing.

2. When those changes are made, a minute order will be mailed to notify parties and counsel. The Court will no longer provide telephonic or email notice. Instead, it is the responsibility of counsel to determine whether hearings remain on calendar by reviewing the Court's online docket late in the afternoon before the hearing had been scheduled to occur.

3. Unless a minute order is entered in the online docket indicating otherwise, all hearings will remain on calendar as scheduled and the Court will expect appropriate appearances.

4. Do not call the clerk of the department to confirm that what the docket says is correct. The courtroom clerk has no information different from or in addition to that shown on the online docket.

F. CASE MANAGEMENT CONFERENCES

1. Immediately after a complaint is filed, a CMC is scheduled on a date approximately six months from the filing date.

2. The primary purpose of a CMC is to determine whether the case is ready either to be set for a TSC or to be ordered to mandatory mediation or mandatory arbitration. (Cal. Rules of Court, rule 3.722(a).) A case is "ready" if (a) the case is at issue and (b) the parties' respective case management statements ("CMSs") provide the necessary information to determine whether the case is subject to either mandatory mediation or mandatory arbitration. A case is "at issue" when all parties have answered or have been either defaulted or dismissed.

3. If the case is at issue and the Court has sufficient information to decide on the next step in the prosecution of that case, the Court is likely to vacate the CMC. (Cal. Rules of Court, rule 3.722(d).)

    a. If the case is subject to mandatory ADR, the Court is likely to order the parties into the Court's mandatory mediation program or judicial arbitration program, and set a completion deadline of 90 to 120 days. If the case is not resolved through that process, a Trial Setting Conference will be scheduled thereafter.

    b. If the case is not being ordered to either mediation or arbitration, the Court is likely to schedule a TSC on a date 90 or 120 days away, depending on how involved the discovery plans are that the parties have described in their respective CMSs.

4. If the case is not at issue, if any plaintiff or cross-complainant has failed to file a CMS, or if the CMS filed by any plaintiff or cross-complainant is incomplete, the Court is likely to continue the CMC until those prerequisites have been met. Therefore, to avoid having to attend multiple CMCs, the parties must file in a timely fashion (a) a complete CMSs from every party and (b) an answer from, or a default or dismissal of, every defendant, cross-defendant, or defendant in intervention.

5. California Rules of Court, rule 3.725, requires the parties, either jointly or separately, to file a CMS on Form CM-110, no later than 15 days in advance of the date set for the CMC. The Court expects counsel to comply with this rule. The failure to comply may result in an OSC why sanctions should not be imposed for the failure to file a timely CMS and in the continuance of the case management conference.

6. Although the Court will schedule a CMC in every case, the Court is likely to vacate the CMC if the case is at issue and the Court can determine, prior to the CMC, whether to set a TSC or order the case to mediation or arbitration. To

make an appropriate determination without conducting a hearing, the Court must rely on the information in the CMS. If the CMS is incomplete, the Court will need to hold a hearing. Accordingly, California Rules of Court, rule 3.725(c) requires counsel to answer *all* portions of Form CM-110. The Court expects counsel to comply this rule. A failure to comply with that rule – especially a failure by a plaintiff or cross-complainant to do so – is likely to result in an OSC why sanctions should not be imposed for the failure to file a complete CMS, in the continuance of the CMC, and in an order to file a new CMS.

a. In particular, the Court will review the answer to Question No. 4.b. of Form CM-110 to determine whether the amount in controversy is $50,000 or less. In <u>any</u> case in which <u>any</u> monetary relief is sought – whether in the form of compensatory damages, punitive damages, statutory penalties, or restitution -- counsel should describe the nature of the wrongful conduct (if not sufficiently described in Question 4.a.), the nature of the damages suffered, and the approximate amount of each type of damage or other form of monetary relief being sought.

    i. For instance, in a case alleging personal injuries, counsel should state as to each plaintiff: the nature of the injury; the estimated past medical expenses; if the plaintiff is still being treated, the nature of the future treatment and the estimated future medical expenses; the estimated past loss of earnings; the estimated future loss of earnings; any other economic damages; and general damages.

        A. If the CMS lists only past medical expenses, the Court is likely to assume that no future medical expenses are expected. Similarly, if the answer describes no past loss of earnings or estimated future loss of earnings, the Court is likely to assume that the plaintiff is not claiming any such losses.

        B. Because the CMS is not prepared until nearly six months after the case is filed, the Court expects plaintiff's counsel to know the amount of plaintiff's past medical expenses. If counsel does not know them, counsel should describe both the efforts made to obtain that information and the nature of the past medical treatment received by the plaintiff.

        C. Any estimates of either past or future medical expenses should be calculated in accordance with *Howell v. Hamilton Meats & Provisions, Inc*. (2011) 52 Cal.4th 541.

        D. If there are more than one plaintiff, the damages alleged to have been suffered by each plaintiff should be described separately.

    ii. In a case alleging other types of torts, such as fraud, property damage, or emotional distress, counsel should state: the nature of

the loss; the estimated economic damages; any general damages; and any punitive damages.

iii. In a case alleging contract claims, such as for breach of contract, warranty, or lease, counsel should state both the nature of the wrongful conduct and the amount of compensatory damages or statutory penalties. If rescission and restitution is sought, counsel should state the amount of restitution.

iv. In a case seeking to quiet title to or to partition real property, counsel should state the estimated value of that real property.

v. Merely stating that the plaintiff has been injured, or has suffered damages, is not sufficient.

vi. Merely stating that the plaintiff has suffered damages in excess of $25,000 is not sufficient, because all unlimited civil cases seeking damages involve damages of at least $25,000.

vii. Conflating all types of damages into a single figure – e.g., "economic damages, non-economic damages, and punitive damages in a sum not less than $500,000" – is not sufficient. The Court cannot independently evaluate the claim unless the amounts of the various damage elements are stated separately.

viii. Conflating damages and attorney's fees into a single figure is not helpful. In evaluating whether a case may be sent to mandatory mediation or arbitration, the Court does not consider attorney's fees or costs of suit.

ix. Descriptions that require the Court to know information that is not stated in the CMS are not sufficient. For instance:

A. "Plaintiff is requesting the entirety of defendant's policy limits."

B. "See Statement of Damages."

C. "Past wages of $15,000, plus commission."

D. "Actual damages of $38,000, plus statutory penalties."

E. "Penalties of $4,000 per occurrence."

x. The Court does not expect counsel to be able to predict with perfect accuracy what the evidence of damages will be at trial. However, by the time that the CMS is filed nearly six months after the case was filed, the Court does expect counsel to have conducted a preliminary investigation into the amount of damages and to make a reasonable estimate of the amount of those damages on the basis of the information obtained as the result of that investigation. Descriptions that attempt to defer those estimates until later or otherwise to duck the obligation to conduct that investigation and make that estimate are not sufficient. For instance:

A. “Damages in an amount to be proven at trial.”

B. “Economic damages in an amount to be determined by an expert.”

C. “Exact amount of past medical expenses is unknown.”

D. “Plaintiff will seek the maximum amount of damages recoverable under the law.”

b. The Court will also review the answer to Question No. 10.b.(1) when deciding whether the case is eligible for the Court’s free Court Ordered Mediation Program, which is limited to cases in which “the amount in controversy, in the opinion of the court, will not exceed fifty thousand dollars ($50,000) for each plaintiff.” (Code Civ. Proc., §§ 1775.3 & 1141.11.) If you think that the reasonable value of your case falls within that limit, you should mark the box at Question No. 10.b.(1).

c. The Court will review the answer to Question No. 10.c. of Form CM-110 to determine whether the parties have agreed to private mediation, binding arbitration, or other form of alternative dispute resolution. The middle column asks whether your client is <u>willing</u> to engage in the specified form of ADR. By contrast, the right-hand column asks whether the parties have actually <u>agreed</u> with each other to engage in that form of ADR. That column should <u>not</u> be marked unless <u>all</u> parties who have appeared in the case have agreed to engage in that form of ADR.

d. The Court will review the answer to Question No. 6.b. of Form CM-110 to determine how far in the future to schedule a TSC or, if the matter is being ordered to mediation, the date by which mediation should be completed. If you do not believe that the case will ready for trial within 12 months from the date it was filed, you should both (i) explain why not and (ii) estimate when the case <u>will</u> be ready to be tried.

e. The Court also reviews the answer to Question No. 16.b. of Form CM-110 for the same scheduling decisions regarding TSCs and mediation completion deadlines. The Court needs to know when non-expert discovery is likely to be completed.

i. A list of each form of discovery contemplated is helpful. A CMS that simply states “all discovery” is not.

ii. An estimate of the month and year that each item of discovery is likely to be finished is helpful. By contrast, responses such as “pending,” “on-going,” “TBD,” “per code,” and “before trial” are not.

7. A party is not required to file a second CMS unless:

a. The Court orders the party to do so, which the Court is likely to do if the first CMS is incomplete; or

b. There has been a material change in either the nature or the amount of the relief sought.

8. Code of Civil Procedure section 631 requires jury fees to be deposited on or before the date scheduled for the initial CMC. The Court expects counsel to comply with that statute even if that CMC is subsequently vacated or continued. A party's failure to comply may result in the Court declaring a forfeiture of that party's right to a jury trial.

9. Counsel may appear at CMCs by CourtCall.

10. Counsel who appear must be familiar with the case and prepared to discuss and bind the party regarding the issues listed in rules 3.724 and 3.727. (Cal. Rules of Court, rule 3.722(c).)

G. TRIAL SETTING CONFERENCES

1. TSCs are generally conducted Mondays through Thursdays.

2. The Court intends to hold only one TSC per case. Counsel should assume that a trial date will be set at the TSC rather than the TSC being continued.

   a. By itself, the desire to file a particular motion, such as a motion for summary judgment, prior to trial will generally not be considered to constitute good cause for either continuing a TSC or setting a trial date more than six months in the future.

   b. By itself, the desire to engage in private mediation prior to trial will generally not be considered to constitute good cause for either continuing a TSC or setting a trial date more than six months in the future.

   c. That a case is not ready for trial as of the date of the TSC will generally not be considered to be good cause for the continuance of the TSC. The relevant consideration is whether the case can be ready for trial five to six months in the future.

3. Trial dates will generally be set on a Friday between five and six months from the TSC. If the Friday of a particular week is a holiday, the trials are likely to be set on the last court day of the week.

4. The Court will set up to five or six trials on each Friday.

5. Before the TSC, the parties should (and if ordered to do so in the order setting the TSC, shall) meet and confer in an attempt to agree on at least two potential trial dates that are no more than six months from the TSC and on which all parties are available for trial. Those cases in which the parties have done so are likely to be given priority at the TSC.

6. The Court will generally not set a trial date that conflicts with a scheduled vacation of trial counsel, of the client, or of experts or other essential witnesses. Counsel should come prepared to discuss the availability of all of those individuals during the period from five to six months from the date of the TSC.

7. The Court will generally not set a trial to begin on the same date on which the trial attorney is scheduled to begin trial in another case. However, the Court may

set a trial to begin on a date on which the trial attorney expects to be engaged in a trial that is scheduled to begin before that date. If that earlier trial actually begins as scheduled and has not resolved by the date set for trial in the later case, with the result that the attorney is not available to begin trial in the later case, the later case will be either continued or trailed.

8. When a trial date is set, the Court may also schedule a mandatory settlement conference ("MSC"). MSCs are usually set about 30 days prior to the trial date. However, the Court lacks the resources to conduct a MSC in every case. The Court is not likely to schedule an MSC:

    a. In cases in which the parties are scheduled to engage in private mediation within three months prior to the trial date.

    b. In professional malpractice cases in which the defendant is insured, if the defendant must give his or her consent to any settlement offer by the insurer, and the defendant has not consented to any offer being made.

    c. In cases in which counsel for all parties believe that the parties' settlement positions are so far apart and so rigid that an MSC is not likely to be fruitful.

    If counsel believe that an MSC should not be scheduled for these or any other reason, counsel shall advise the Court at the TSC.

9. The parties should explore their respective willingness to engage in private mediation or other voluntary ADR before the TSC. The Court is not likely to take the time to do so during the TSC.

10. Counsel may appear at TSCs by CourtCall.

11. The Court expects those counsel who appear at a TSC to know:

    a. Whether the case will be ready for trial in approximately five to six months, and if not, (i) specifically why it will not be ready and (ii) when it will be ready.

    b. The two potential trial dates agreed upon by the parties.

    c. In case the agreed-upon dates are no longer available, the availability of trial counsel, clients, expert witnesses, and percipient witnesses, including both their trial or work schedules and their scheduled vacations, on all Fridays between five and six months from the TSC.

    d. Whether that party is requesting a jury trial, and if so, (i) the date on which that party deposited jury fees and (ii) whether that deposit was timely under Code of Civil Procedure section 631.

    e. The estimated length of the trial.

    f. The nature and date of any past or scheduled mediation or other settlement efforts.

    g. Whether a MSC should be scheduled.

h. Whether their clients and their clients' insurance representative are available on the trial date. Before sending a case to a trial department, the Court expects the parties to make one more effort to resolve the case. Mediators will be available on the date of trial for that purpose. If the parties and other decision-makers, such as insurance professionals, cannot be present on the trial date, counsel should advise the Court at the TSC.

12. At the conclusion of the TSC, the Court is likely to issue a Trial Setting Order. A sample may be viewed on the Court's internet site. (From the Court's website, select "Divisions," then "Civil," then "Case Management and Trial Setting," then "Sample Trial Setting Order.")

H. TRIAL CALLS

1. All trials will be called on Fridays at 8:30 A.M.

2. The lead trial counsel for each party should attend the trial call in person. Counsel may not appear by CourtCall.

3. If more than one trial is ready, any additional trials that are ready may be assigned to a trial department in Riverside, Palm Springs or Murrieta.

4. Unless the trial is reassigned to a different courthouse:

   a. Short-cause trials (those estimated at less than five hours) will generally commence on the day set for trial.

   b. All parties in all long-cause trials (five hours or more) should be prepared to participate in a pretrial conference on the day set for trial, and to begin trial the following court day.

6. Except for non-jury unlawful detainer trials and non-jury trials estimated to take five hours or less, all parties must comply with Riverside Superior Court Local Rule 3401, and must bring the documents specified in § 9.b. of that rule on the day of the trial call. There will be no other exceptions. Failure to comply with that rule may result in the continuance of the trial, in the imposition of the sanctions described in rule 3401, and/or in an OSC why monetary sanctions should not be imposed.

6. The Court encourages parties to participate in an eleventh-hour mediation on the trial date. All parties, counsel, insurance representatives and any other persons necessary to participate in settlement discussions and enter a settlement on the record pursuant to Code of Civil Procedure section 664.6 are required to appear on the day set for trial, unless the Court has excused that appearance in advance.

7. If the principal trial counsel is engaged in trial on another matter, the trial of the present case will be either (a) trailed until counsel becomes available or (b) continued, in the Court's discretion.

I. MANDATORY SETTLEMENT CONFERENCES

1. MSCs are conducted in Department 12 (for cases assigned to departments in Riverside and Palm Springs) and in Department S205 (for cases assigned to departments in Murrieta).

2. Unless an attorney's appearance is excused in advance in writing by the Court, the principal trial counsel for every party must personally appear at the MSC. (Cal. Rules of Court, rule 3.1380(b).) Appearance by telephone or CourtCall is not sufficient.

3. All parties must appear in person unless that party's appearance is excused in advance in writing by the Court. (Cal. Rules of Court, rule 3.1380(b).) If the party is not an individual, the person attending on behalf of the party shall come with full authority to settle all claims made by or against that party. (*Ibid*.)

    a. As to a plaintiff, cross-complainant, or any other party seeking affirmative relief, "full authority to settle" means the authority of the person present (i) to dismiss or compromise that party's claims in exchange for consideration in any sum whatsoever (ii) without consulting anyone not personally present at the settlement conference.

    b. As to any defendant, cross-defendant, or defendant-in-intervention, "full authority to settle" means the authority of the person present to bind the party (i) to pay an amount equal to the sum of the claimants' settlement demands against that party (ii) without consulting anyone not personally present at the settlement conference.

4. Unless his or her appearance is excused in advance in writing, the handling insurance claims professional for every insurer insuring any party shall appear in person, and shall come with full authority to settle all claims against the insured. (Cal. Rules of Court, rule 3.1380(b).) "Full authority to settle" means the authority of the person present to bind the insurer (a) to pay an amount equal either to the sum of the claimants' settlement demands against the insured or to the policy limits, whichever is less (b) without consulting anyone not personally present at the settlement conference.

5. Any request to excuse any attorney, party, or insurance claims professional from personally appearing at the MSC should be:

    a. Presented to the Court at least 10 days before the MSC.

    b. Supported by a declaration by the person seeking to be excused from appearing. That declaration should:

        (i) Establish the facts justifying the excuse;

        (ii) State whether the party, attorney, or insurance claims professional was personally present at any prior mediations or settlement conferences; and

(iii) Describe the extent to which that party, attorney, or insurance claims professional participated in any prior mediation, settlement conference, or informal settlement efforts.

c. Be served on all parties.

If a basis for the request is that some other person will be personally attending the MSC with full authority to settle, the declaration should expressly state that the person has "'full authority' as that term is defined in the Court's procedures."

6. Immediately upon learning of an order setting an MSC, trial counsel for each party should mail a copy of that order to all handling insurance claims professionals for that party's insurance carriers. If trial counsel becomes aware that any insurance claims professional is refusing to attend the MSC, trial counsel should advise the Court in writing of the name, address, and telephone number both of the person who is refusing to attend and that person's supervisor.

7. The MSC should never be the beginning of the settlement negotiations. During the month prior to the MSC, both sides should exchange written settlement demands and offers.

8. No attorney, party, or insurance claims professional should leave the MSC until he or she is excused by the Court.

J. MOTIONS & APPLICATIONS IN GENERAL

1. Any motion or application for relief should describe any prior motion or application in this case for the same or similar relief, including the name of the party who brought the prior motion or application, the date of the ruling on that motion or application, and the nature of that ruling.

2. Any party who obtains an order as a result of any motion, application, or stipulation filed by that party should promptly (a) serve a copy of that order on all parties and (b) file a proof of that service with the Court.

3. Any request to continue a hearing, a CMC, a TSC, or a status conference should be (a) labelled as being a request for such relief, (b) supported by a declaration or stipulation establishing the facts that demonstrate good cause for that relief, and (c) accompanied by a proposed order.

4. All factual assertions on which the motion or application relies must be supported by competent evidence in the form of either a declaration or stipulation of facts.

5. Any declaration in support of a motion or application must be (a) executed by a declarant with personal knowledge of the facts stated and (b) signed under penalty of perjury consistent with Code of Civil Procedure section 2015.5. The Court will not rely on factual assertions for which no basis of personal knowledge of the declarant is shown, that are certified to be true only to the best of the declarant's information and belief, or that are not sworn.

6. If the court is asked to take judicial notice of some document already filed with the Riverside Superior Court to support or oppose some motion or application,

the request should state (a) the name and case number of the case in which the document is filed, (b) the full name of the document, and (c) the date on which the document was filed. (Cal. Rules of Court, rule 3.1306(c)(1).) A second copy of the document should not be attached to the request.

7. Counsel need not lodge copies of out-of-state authorities to which they have cited unless that authority is not available on Lexis and Westlaw.

8. The Court will not grant any relief based on a stipulation of a party that has not yet paid its first-appearance fee.

9. Noticed Motions in General

   a. Noticed motions are set for hearings on Monday through Thursday at 8:30 A.M. Noticed motions are not heard on Fridays unless they are motions to continue a trial scheduled to begin on that Friday.

   b. Counsel may appear at hearings on motions by CourtCall.

10. Ex Parte Applications in General

   a. Ex parte applications are heard at 8:30 A.M. Monday through Thursday. Ex parte applications are not heard on Fridays unless the application seeks a continuance of a trial set to begin on that Friday.

   b. Any application for ex parte relief must be supported by a showing of exigent circumstances justifying ex parte relief by explaining why the application could not, with the exercise of reasonable diligence, have been brought by a noticed motion. If the claimed exigency – for example, the trial that you want continued – will not occur within the next two months, the Court is unlikely to find that this requirement has been met.

   c. A party making an ex parte application must, inter alia, "[a]ttempt to determine whether the opposing party will appear to oppose the application." (Cal. Rules of Court, rule 3.1204(a)(2).) The Court does not consider written notice asking the opposing party to inform the moving party of the opposing party's intentions to be sufficient to satisfy that rule. Instead, the attempt should be made by telephone.

   d. The Court will not grant an application for an order shortening time for notice of a non-existent motion. Therefore, a party desiring an order shortening time for notice of a motion should not bring an ex parte application for such an order until that party has first (i) reserved a hearing date for the motion, (ii) paid the appropriate filing fee for the motion (or obtained a fee waiver), and (iii) filed the motion. The Court will not deem the ex parte application as constituting the motion to be heard. The hearing date reserved for the motion should be the earliest date available in the assigned department. The application should be supported by a declaration that either affirms that the hearing date was the earliest available or explains why a later date was reserved.

   e. The Court has the discretion to deny *ex parte* applications without a hearing. If the Court does so, a minute order will be entered no later than

the day before the scheduled hearing. It is the responsibility of counsel to check the online docket to determine whether the Court has denied the application and vacated the hearing.

f. When denying an ex parte application, the Court will usually state the reasons for that denial. That statement is designed to demonstrate that the application has been read and considered. It is not an invitation to submit an amended application. Like repetitive motions, repetitive ex parte applications are subject to the restrictions of Code of Civil Procedure section 1008. If your ex parte application has been denied, do not re-file a substantially similar application without complying with that section.

g. Counsel may appear at hearings on *ex parte* applications by CourtCall.

K. MOTIONS AND APPLICATIONS TO CONTINUE TRIAL

1. "To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain." (Cal. Rules of Court, rule 3.1332.) Trial dates are not firm and certain if they are easily continued. Therefore, counsel should expect any effort to continue a trial to be closely scrutinized and likely to fail.

2. Code of Civil Procedure section 595.2 authorizes the parties to stipulate to the continuance of trials for up to 30 days without a showing of good cause. However, that section has been held to be directory rather than mandatory. The Court will continue the trial pursuant to that section only under the following conditions:

   a. The current trial date is no more than 18 months after the filing date of the complaint;

   b. The trial date has not previously been continued for any reason;

   c. The requested continuance is for no more than 28 days; and

   d. A written stipulation by all parties and a proposed order has been submitted at least five court days in advance of the trial date.

   Section 595.2 permits a continuance of the trial without cause, but it does not confer the right to an extension of pretrial deadlines for discovery, dispositive motions, etc., without good cause. Therefore, without a showing of good cause, the deadlines are likely to continue to be measured from the initial trial date.

3. With the exception of continuances that are granted pursuant to paragraph 2, above, no trial may be continued absent an affirmative showing of the facts that demonstrate good cause for a continuance. (Cal. Rules of Court, rule 3.1332(c).) Good cause should be shown both for a continuance and for a continuance of the length requested.

   a. A stipulation that good cause exists does not constitute such a factual showing.

b. The fact that the parties agree to a continuance does not constitute good cause

c. A desire to mediate or to engage in settlement negotiations does not constitute good cause. Once the trial date has been set, counsel should be preparing for trial at the same time that counsel continue their efforts to settle the case. Trial preparation should be concurrent with settlement efforts, not delayed until settlement efforts have failed.

d. The failure to complete discovery or other trial preparation is good cause for a continuance only if a party has been reasonably diligent in attempting to prepare for trial. (Cal. Rules of Court, rule 3.1332(c)(6).) Any request on that ground must affirmatively demonstrate that diligence.

e. The substitution of counsel is not good cause for the continuance of a trial unless there is an affirmative showing that the substitution was required in the interests of justice. (Cal. Rules of Court, rule 3.1332(c)(4).) Therefore, any request on the ground of a recent change of trial counsel should explain in detail:

    i. Why was the substitution necessary?

    ii. When did the substitution occur, and why did it not occur earlier?

    iii. What has new counsel done to date to prepare for trial, and when did new counsel begin to do so? If those preparations did not begin promptly following the substitution, why not?

    iv. What else does new counsel need to do to prepare for trial, and how long will it take to do so?

f. To attempt to demonstrate good cause on the ground of the unavailability of a percipient witness, the request should:

    i. Make an offer of proof of the testimony to be provided by that witness;

    ii. Explain why that testimony is material;

    iii. Explain why that testimony cannot be offered by another witness; and

    iv. Prove that the witness has been served with a subpoena.

g. To attempt to demonstrate good cause on the ground of the unavailability of an expert witness for either deposition or trial, the request should:

    i. Make an offer of proof of the testimony to be provided by that witness;

    ii. Explain why that testimony is material;

    iii. Explain why that testimony cannot be offered by another expert;

    iv. State when counsel retained that expert;

    v. State how and when counsel informed the expert of the trial date;

vi. State how and when the expert agreed to be available for a trial starting on that date and for a deposition preceding that date; and

vii. State how and when counsel learned that the expert was not available.

h. To attempt to demonstrate good cause on the ground of the unavailability of trial counsel, the request should:

i. State when the conflicting event was scheduled in relationship to the scheduling of the trial date;

ii. State when trial counsel became aware of the conflict; and

iii. Explain why other counsel cannot substitute for trial counsel during the period of the conflict.

i. Any request for a continuance must be made as soon as reasonably practical once the necessity for the continuance is discovered. (Cal. Rules of Court, rule 3.1332(b).) Therefore, the request should state when the applicant discovered the circumstances that allegedly show that a continuance is necessary.

4. Unless the request to continue the trial complies with paragraph 2 above, any such request should generally be made by a noticed motion.

5. A stipulation for a continuance will be considered in lieu of a motion. However, unless the stipulation complies with paragraph 2 above, the parties must stipulate to facts from the Court may conclude that there is good cause for a continuance of the length requested. (Cal. Rules of Court, rule 3.1332(c).)

6. Requests to continue trial may be made by *ex parte* application only if exigent circumstances exist. Any such request shall explain why the application could not, with the exercise of reasonable diligence, have been brought by a noticed motion. If the trial date is more than two months away, the Court is unlikely to find that exigent circumstances exist.

7. No *ex parte* applications should be scheduled to be heard on a Friday unless both of the following are true:

a. The application concerns a trial set to begin on that Friday; and

b. The facts justifying the application occurred or became known too late to bring an application on the preceding Thursday.

Any applications that meet those criteria will be heard on Friday at 8:30 A.M. along with the trial call.

8. **No oral requests for a trial continuance will be considered on the day of trial.** Requests for continuance on the ground that trial counsel is engaged in another trial may be made by declaration on the day of trial. Any such declaration shall describe the conflicting trial by stating:

a. The case name and case number;

b. The courthouse and department in which the trial is pending, the name of the judge presiding of the trial, and the telephone number of the clerk of that department;

c. The date on which the trial commenced, the current stage of the trial, and the date on which the trial is expected to be submitted to the judge or jury for decision; and

d. Whether counsel is the principal trial counsel in that trial, and if not, a description of counsel's responsibilities in that trial.

9. The Court may find good cause for a continuance, but not for a continuance of the length requested. Therefore, when appearing at a hearing on either a motion or ex parte application seeking a trial continuance, counsel shall come prepared with information concerning the availability of counsel, the client, and the witnesses for the entire period from the current trial date to the requested trial date.

L. OTHER MOTIONS AND APPLICATIONS

1. Relief from Monetary Sanctions

An order by the Court imposing monetary sanctions – such as for the failure to serve, the failure to take default, or the failure to file a timely and complete case management statement – does not create an exigent circumstance requiring immediate relief. Therefore, any request for relief should be brought by noticed motion rather than by an ex parte application.

2. Relief from Dismissal

Unless a trial on a related claim is imminent, an order dismissing a complaint or cross-complaint generally does not create an exigent circumstance requiring immediate relief. Therefore, any request for relief should be generally be brought by noticed motion rather than by an ex parte application. If ex parte relief is sought, the application must explain the nature of the exigency that justifies ex parte relief.

3. Consolidation

Any request to consolidate cases, whether presented by stipulation or by motion, shall strictly comply with both California Rules of Court, rule 3.500, and RSC Local Rule 3199.

4. Relief from Forfeiture of Right to Jury Trial

Any request for relief from a forfeiture of the right to a jury trial should be brought in the form of a noticed motion to be heard not later than 25 calendar days before the date initially set for trial. That party should not post jury fees until that party has succeeded in obtaining relief from that forfeiture.

M. ORDERS TO SHOW CAUSE

1. When it appears that a party has failed to comply with case management rules – such as be failing to serve a party or seek the entry of default of a party in a timely fashion, the failure to file a complete CMS, or the failure to file a CMS at all – the Court is likely to issue an OSC why sanctions of up to $1,500 or dismissal should not be imposed for that failure.

2. Riverside Superior Court Local Rule 3116 provides:

   "Unless otherwise specified in the Order to Show Cause, any response in opposition to an Order to Show Cause (a) shall be in the form of a written declaration and (b) shall be filed no less than four court days before the hearing on the Order to Show Cause. The Court may find the failure to file a timely declaration to constitute an admission by the responding party that there are no meritorious grounds on which to oppose the action that is the subject of the Order to Show Cause. In that event, the Court may vacate the hearing and issue any order consistent with that admission."

   That rule applies to every OSC returnable in Department 1, and will be strictly enforced.

3. To help ensure that any declaration submitted in response to an OSC is filed and imaged in a timely fashion after it is received by the clerk's office, any such declaration should state on the front page of the declaration both:

   a. A title that refers to the OSC (e.g., "Declaration of Roger Rabbit in response to Order to Show Cause"); and

   b. The date the OSC is returnable directly beneath that title.

4. Whenever an OSC is issued, two questions are presented.

   a. Is the Court correct in believing that the rule was violated?

      i. If counsel believes that there has been no violation, the declaration should demonstrate that counsel has complied. For instance, if the OSC is for the failure to serve a party, was the Court correct that no proof of service for that party had been filed within the time prescribed by the California Rules of Court? If the Court is mistaken, the declaration should state the date on which the proof of service was timely filed.

      ii. A violation is not cured, and sanctions avoided, by belatedly complying with the rule or order after the issuance of the OSC but before filing the declaration in response to the OSC. The issue is whether the violation existed at the time that the OSC was issued, not whether the violation still existed at the time the declaration was filed. Thus, serving a defendant and filing a proof of service after an OSC for the failure to serve will not avoid sanctions for the failure to serve the defendant in a timely fashion.

b. If counsel has failed to comply with a particular rule or order, does counsel have good cause for failing to do so? To demonstrate good cause, the declaration must show that counsel made a reasonably diligent effort to comply with the requirement that is the subject of the OSC but that, for reasons not within counsel's control, counsel was not able to comply. Negligent mistakes or lapses of attention, such as calendaring errors or failures of memory, do not constitute good cause.

5. Particular OSCs:

a. When the Court issues an OSC why monetary or terminating sanctions should not be imposed on a plaintiff or cross-complainant for the failure to serve defendants or cross-defendants, or for the failure to take the default of defendants or cross-defendants who have been served for more than 30 days but have not appeared, the party to whom the OSC is directed should take the following steps:

i. Examine the clerk's on-line record regarding the status of the defendants or cross-defendants named in your complaint, cross-complaint, or complaint in intervention. Do not rely either on your memory or on your file.

ii. If the clerk describes the status of any of those defendants or cross-defendant as either "Serve Required" (meaning that the clerk believes that no proof of service of that pleading on that party has ever been filed) or "Served" (meaning that a proof of service has been filed but that no responsive pleading, no request for entry of default, and no dismissal has ever been filed), then you should file a declaration in response to the OSC, as required by rule 3116.

iii. Your declaration should identify each defendant or cross-defendant named in your pleading that the clerk describes as either Serve Required or Served. As to each one, the declaration should separately explain either (i) why the clerk is mistaken or (ii) why there is good cause for the failure to serve or take the default of that party.

iv. Our overworked clerks do make mistakes. If you believe that the clerk is incorrect, you should explain the basis for that belief.

(A) For instance, if the clerk lists the status of a defendant as Serve Required, but you have filed a proof of service that appears in the Court's file, state the date on which that overlooked proof of service was filed. Similarly, if the defendant has answered or has been defaulted or dismissed, state the date on which the answer was filed or the date on which the default or dismissal was entered.

(B) The Court does not need, and does not want, another copy of the proof of service, answer, default, or dismissal itself. If such a document has indeed been filed, then the Court can

examine it in the Court's database so long as you provide the date on which it was filed.

(C) In addition to filing a timely declaration in compliance with RSC Local Rule 3116, the Court expects you to speak to the clerk's office in an effort to correct those errors by pointing out to the clerk the dates of the overlooked proof of service, answer, entry of default, or dismissal, as the case may be.

v. If the clerk is correct, but you believe that there is good cause for your failure to serve or your failure to take the defendant's default, then your declaration should explain the facts establishing that good cause.

(A) A factual showing of good cause for the failure to serve a defendant or cross-defendant in a timely fashion requires more than simply claiming that you have been unable to serve the defendant. The declaration should explain (1) the date on which the defendant or cross-defendant was named, if different from the date the pleading was filed, (2) the date on which the efforts to serve occurred, (3) the nature of those efforts, (4) the results of those efforts, and (5) the date and nature of the additional steps taken in response to those results. Unsupported claims that the defendant is evading service, or that efforts to serve are continuing, are not sufficient to establish good cause.

(B) A factual showing of good cause for the failure to request entry of a default requires more than simply claiming that you are in negotiations with the defendant or the defendant's insurance carrier. The declaration should state (1) the date on which you made contact with the defendant or the defendant's counsel or adjuster, (2) the date on which the last offer or demand was exchanged, (3) the length of any extension of time granted, and (4) the date that extension expires. If you have granted an extension longer than the 15 days permitted under California Rules of Court, rule 3.110(d), then the declaration should explain that decision.

b. When the Court issues an OSC for the failure to file a *timely* CMS, it means that the Court believes that the party to whom the OSC is directed failed to file a CMS. If the Court is mistaken, the declaration in response should state the date that the CMS was filed. If the Court is correct, the declaration should state the reasons why the CMS was not filed in a timely fashion. Filing a CMS after the issuance of the OSC does not explain why the party failed to timely comply, does not excuse the failure to file the CMS when it was due under the Rules of Court, and thus is not likely to avoid the imposition of sanctions.

c. When the Court issues an OSC for the failure to file a *complete* CMS, it means that the Court believes that the party failed to answer all of the questions on the CMS. Typically, the material omission is the failure to fully answer Question 4.b. concerning the nature and the amount of the damages allegedly suffered or the other relief being sought. If the Court is incorrect, the declaration in response should state the date that a complete CMS was filed and the location in the CMS of the information regarding the nature and amount of the damages and other relief may be found. If the Court is correct, the declaration should state the reasons why the required information was not included in the CMS. Filing a revised CMS after the issuance of the OSC does not explain why the party failed to file a complete CMS in the first instance, does not excuse the failure to file a complete CMS when it was due under the Rules of Court, and thus is not likely to avoid the imposition of sanctions.

6. Sanctions

a. Sanctions are not reserved for cases in which counsel intentionally violated the requirement in question. Instead, sanctions are likely to be imposed whenever the declaration fails to demonstrate good cause for that violation.

b. Sanctions are imposed for the failure to demonstrate good cause for a violation, not for the failure to file a declaration in response to the OSC. Therefore, if there has been a violation but there is no good cause to be shown, counsel need not file a declaration. Refraining from doing so will save counsel time, save the client money, and allow the Court to impose the appropriate sanction without a hearing.

c. When monetary sanctions are imposed on counsel, either separately or jointly with the party represented by that counsel, the Court is likely to impose sanctions in the sum of $250 in a first instance, $500 in the second instance, and $750 or $1,000 in the third instance. If that attorney or law firm has a history of failing to comply with case management rules, either in that case or others, the Court may impose sanctions of more than $500 in the second instance. If the Court imposes sanctions totaling $1,000 or more on counsel in a single day, the Court will report that order to the State Bar, as required by Business & Professions Code section 6086.7, subdivision (a)(3).

d. When monetary sanctions are imposed on a self-represented party, the Court is likely to impose $100 in the first instance. If a self-represented plaintiff or cross-complainant fails to appear in response to a second or subsequent OSC, the Court is likely to dismiss that party's complaint or to strike that party's answer rather than imposing additional monetary sanctions.

7. Unless the OSC expressly orders counsel to be present in person, counsel may appear at hearings on OSCs by CourtCall.

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