

## A Handy Guide to Department 39

### 1. Proposed Orders

- a. Follow Rule 3.1312 of the California Rules of Court.
- b. The proposed order should be in Word (.doc) format.
- c. All blank spaces (*e.g.* for the date of hearing) must be filled in – except for the date on which it is signed.
- d. The order should *not* include “[Proposed]” in the caption or the footer.
- e. If the order has exhibits or attachments, they should be included in the Word document as well as the PDF document. The Court should not have to assemble an order from several pieces.
- f. After the hearing, the order should be sent to [cxlit@contracosta.courts.ca.gov](mailto:cxlit@contracosta.courts.ca.gov) with a copy of the e-mail sent to all counsel/unrepresented parties.
- g. If the order has been approved as to form, a PDF should *also* be sent so the judge can see the real signature on the order.
- h. If there is a dispute about the form of the order, note that in the e-mail.
- i. Neither e-filing a proposed order nor sending a paper courtesy copy to chambers is sufficient. The order must be sent to the e-mail address shown above.
- j. The order should also be filed in Odyssey. The envelope number will need to be provided in the email as proof that you filed your order in Odyssey before sending it to the complex litigation email box.

### 2. Proposed Stipulation and Orders

- a. The proposed stipulation and order should be in Word (.doc) format.
- b. All blank spaces must be filled in – except for the date on which it is signed.
- c. The order should *not* include “[Proposed]” in the caption or the footer.
- d. If the order has exhibits or attachments, they should be included in the Word document as well as the PDF document. The Court should not have to assemble an order from several pieces.
- e. The stipulation and order should be sent to [cxlit@contracosta.courts.ca.gov](mailto:cxlit@contracosta.courts.ca.gov) with a copy of the e-mail sent to all counsel/unrepresented parties.
- f. A PDF version should *also* be sent so the judge can see the real signatures of counsel. /S/name is not acceptable.
- g. The stipulation and order should also be filed in Odyssey. The envelope number will need to be provided in the email as proof that you filed your stipulation and order in Odyssey before sending it to the complex litigation email box.

### 3. Case management conference statements in complex cases

- a. Parties are **not** to use the Judicial Council Form CM-110 for case management conference statements in **complex cases**. Instead, they are to meet and confer and file a joint case management conference statement, five calendar days before the

case management conference. It should address those of the items listed in Rule 3.727 of the Rules of Court that are most salient at the time and that will help the parties and the Court manage the case to an expeditious conclusion.

- b. Courtesy copies need not be filed. The Court reads the e-filed version.
  - c. In construction defect cases: Cross-defendants need not file a case management conference statement. However, if any cross-defendant, having seen the case management statement filed by the homeowners and developer, wishes to add or raise anything for the Court's consideration, it may file a case management conference statement three calendar days before the case management conference.
4. Good Faith Settlements
- a. CCP 877.6(a) provides that "a determination...that the settlement was made in good faith shall bar any...further claims...." The order should use that language.
  - b. Do not submit a form of order that *e.g.* "dismisses all complaints and cross-complaints" unless the good faith motion complied with Rule of Court 3.1382.
5. Continuances
- a. Counsel should prepare a stipulation and order.
  - b. The document (in Word (.doc) and PDF) should be sent to the complex litigation e-mail box. See paragraph #1 above.
  - c. The subject line of the e-mail should include the words "Continuance Requested".
  - d. Counsel should indicate at least three dates on which they are available for the continued hearing. See the Court's website for the days on which different kinds of hearings are set.
  - e. Plan ahead. Do not submit a request for a continuance at the last minute.
  - f. Do not request a continuance of a case management conference in a case management conference statement. It is unlikely to be seen in time to be granted.
  - g. The stipulation and order should also be filed in Odyssey. The envelope number will need to be provided as proof that you filed your order in Odyssey before sending it to the complex litigation email box.
6. Settlements/Dismissals
- a. If a stipulation or order settles a case, counsel still must file a dismissal of the action to take all hearings off calendar. See Judicial Council Form Civ-110.
  - b. Unless box 1.b.(5) is checked on Form Civ-110, the case will remain on the Court's active docket.
  - c. If a case is settled shortly before a significant hearing, issue conference or trial, please notify the clerk promptly so the Court does not spend time unnecessarily on your case.

7. Briefs

- a. The Court has access to Lexis Advance; not Westlaw. Do not use Westlaw citations unless you also provide a parallel citation.
- b. It is not necessary to attach out-of-state authority. A citation is sufficient.
- c. In cases with a voluminous record, the Court may request hyperlinked briefs.

8. Hearings

- a. Each time you appear in person, please fill out an attorney appearance slip. If you do not, there is a chance the clerk will not include your appearance correctly in the minutes.
- b. The Court permits parties to appear by Zoom (please see link information on the court's website).
- c. If appearing by Zoom:
  - (1) State your name each time you speak.
  - (2) Speak slowly and clearly; there may be a short lag between the time you speak and the time you are heard in the courtroom.

9. Ex Parte Applications

- a. Ex parte applications are heard every morning at 10:00 a.m. The moving papers as well as any opposition, must be brought directly to the courtroom at 10:00 a.m. Please do not e-file or drop off any courtesy copies of ex parte documents. After the hearing, you will be required to file the documents in the clerk's office.
- b. The Court insists on full compliance with Rule of Court 3.1200 et seq.

10. Discovery Issues

- a. Counsel shall not use the Court's Discovery Facilitator program for **complex cases**.
- b. The Court hosts informal conferences where there are intractable discovery disputes. These conferences are without prejudice to any party's right to bring a formal motion.
- c. Before seeking an informal conference, counsel must meet and confer either over the phone or (better yet) in person to attempt to resolve the dispute or at least narrow their differences. (see California Attorney Guidelines of Civility and Professionalism, § 10, example b. ["In complying with any meet and confer requirement in the California Code of Civil Procedure, an attorney should speak personally with opposing counsel and engage in a good faith effort to resolve or informally limit an issue."].)
- d. If a dispute remains, please contact the department clerk for directions on how to obtain an informal discovery conference and possible dates. Your request must include a brief declaration as set forth in CCP §2016.080(b). Unless otherwise specified by the Court, seven days before the conference, you must file a letter brief, not exceeding five pages, outlining the dispute.

11. Class Action Settlements and Dismissals

- a. When seeking preliminary or final approval, please refer to the Los Angeles Superior Court checklists:  
<http://www.lacourt.org/division/civil/pdf/PreliminaryApprovalofClassActionSettlement.pdf>; (preliminary);  
<http://www.lacourt.org/division/civil/pdf/FinalApprovalofClassActionSettlement.pdf> (final)
- b. Notices to class members must be written in plain English. See the materials available on the Federal Judicial Center's website; e.g. <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf> and <https://www.fjc.gov/sites/default/files/2016/ClaAct13.pdf>
- c. With regard to any cy pres provision in a class action settlement, please be familiar with CCP 384, as amended by Stats 2017 ch. 17 §4 (AB 103).
- d. The Court gives very careful scrutiny to any request to dismiss a class claim in a settlement that resolves only the named class representative's claims. See Rule of Court 3.770.

12. PAGA Settlements (Labor Code section 2698 et seq)

- a. Counsel will be expected to have reviewed and be familiar with Labor Code section 2698 et seq.
- b. The Court will not grant approval to any PAGA settlement that does not comply with Labor Code section 2699(1)(2).

13. "Educating" the Court

- a. Some complex cases involve unusual physical settings, technological issues, or unfamiliar matters. If you think it would be helpful to take an hour or two at a specially set hearing to "educate" the Court about the matters involved in your case, discuss that with the other counsel and consider raising it at a case management conference.
- b. In CEQA cases, the Court is likely to suggest this at the initial case management conference. Please be prepared to respond to that suggestion.

14. Court Reporters

At this time, court reporters are not provided for any hearings in civil cases in department 39. You may retain your own outside court reporter. If you retain the services of a court reporter for any hearing in department 39, you must completely fill out and submit a Stipulation and Order to Use Certified Shorthand Reporter Pro Tempore and Reporter Agreement (Form CV-310) to the complex litigation email box one day prior to the hearing. The stipulation and order will not be filed until the day of the hearing and the right court reporter shows up for the hearing. There is no fee for this stipulation and order. Counsel are responsible for submitting this

stipulation and order, not the court reporter. More information about court reporter information can be found on the court's website under Court Process and Information, Court Reporting Services.

15. Questions

You may call the Clerk of the Department at (925) 608-1139. Please note, the clerk cannot always answer the phone; especially when the court is on the record.