



Court of Appeal of the State of California Fourth Appellate District, Division Three

601 WEST SANTA ANA BLVD., SANTA ANA, CA 92701
714-571-2631 (*Settlement Conference Chambers*)
714-571-2632 (*Settlement Fax*)

O.C. SETTLEMENTS: Attending a Settlement Conference

This handout is designed to tell you what to expect if you are ordered to attend a settlement conference as part of the court's Judicial Settlement Program.

- QUESTIONS? Write, telephone or email the Settlement Conference Clerk at (714) 571-2631, or 4d3settlement@jud.ca.gov.
- Here is a list of topics covered by this handout:

- I. **ATTENDING SETTLEMENT CONFERENCES – the FAQs**
- II. **SETTLEMENT RULES & PROCEDURES**
- III. **DIRECTIONS TO SETTLEMENT CONFERENCE FACILITIES**

IMPORTANT!! WHO MUST ATTEND

Section IV, subdivision E(3) of the court's Internal Operating Practices and Procedures, provides:

“PERSONAL ATTENDANCE. Unless otherwise specified, all parties and their counsel must attend any settlement conference in person, and must have full settlement authority. Attendance by counsel claiming settlement authority is not sufficient. Any exceptions must be approved in advance by the court. . . . b. **INSURANCE.** If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply also *must personally* attend all settlement conferences, with full settlement authority.” (Italics added; see also *Campagnone v. Enjoyable Pools & Spas Service & Repairs, Inc.* (2008) 163 Cal.App.4th 566; *Sigala v. Anaheim City School Dist.* (1993) 15 Cal.App.4th 661, 669; *City of El Monte v. Takei* (1984) 158 Cal.App.3d 244, 248.)

The parties and their counsel have a duty to notify any insurance carriers with potential insurance coverage that appellate mediation has been ordered and that they must personally attend, with full settlement authority.

◆ Part One: Attending Settlement Conferences – Just the FAQs

1. Where are settlement conferences held? Settlement conferences are held at the Court of Appeal, located in downtown Santa Ana at 601 West Santa Ana Blvd. The settlement conference facilities are located in Room 107, on the first floor, immediately opposite the courtroom.

2. When should I check in to a settlement conference? Check-in about 5 to 10 minutes before the start of the conference. Although the courthouse lobby is open during normal business hours, the settlement conference chambers generally are not accessible until the check-in time.

3. What happens at a settlement conference? Settlement conferences are confidential proceedings that are not open to the public, and conversations and discussions at the settlement conference are not admissible elsewhere. The conference may be conducted in joint session, individual caucuses, or an amalgam of the two. Depending upon the circumstances, the conference may take several hours, or even all day. The conference is an informal, low-key proceeding to explore the parties' options and to foster discussion of alternatives. The Judicial Settlement Officer has no role in the appellate decisionmaking process.

4. Who conducts the settlement conferences? Presiding Justice David G. Sills decides who will preside at any settlement conference. The judicial settlement officer may be a justice at the court, a pro tem, or any other court-appointed officer. Robert S. Wolfe, the supervising attorney who directs the settlement program, has conducted hundreds of appellate mediations and settlement conferences for the court. In addition, parties may stipulate to the use of an outside mediator, at their expense, although the court does not make its own facilities available for such a service.

5. Should I prepare a settlement brief? What do they look like, and when are they due? The court may or may not have access to the trial court record at the time of the settlement conference. The Settlement Conference Clerk should notify you about what supplemental settlement materials are needed for the conference. If you are unclear about what you need to provide, please contact her at least a week in advance of the conference. The court will endeavor to minimize your expenses, and will accept faxed and emailed materials.

6. What do I need to do to prepare for a settlement conference? Be familiar with your case and be prepared to discuss your contentions in detail. Talk with your clients in advance of the conference to tell them what to expect. Review your SCIF for completeness and accuracy and promptly inform the settlement conference clerk of any material changes or omissions at least three court days before the settlement conference.

7. Where do I park? Does the court validate for parking? There is a public parking structure (#P6 Parking) located west of the court at the intersection of Santa Ana Blvd. and Parton Street. The parking cost is \$1 per half-hour, up to a maximum \$19 per day. The court does not validate parking. Payment must be made by cash only – no credit cards.

8. May I bring my laptop computer and cellphone to a settlement conference? Laptop computers and cellphones are permissible at settlement conferences, but the court does not offer Wi-Fi access. You may not be able to personally carry in electronic devices to the settlement conference area on days in which the court also holds oral argument. Check with the settlement conference coordinator for more information about security screening procedures.

9. What if I want to change the date for a court-ordered settlement conference? Try to secure a stipulation from opposing counsel for an alternative date, although this also must be approved by the court. If not, you must serve and file your request for a continuance in writing, showing good cause, at least five court days before the conference.

10. May I just call in by phone? May I just send my attorney if he or she has full settlement authority? Unless excused, all parties and insurance representatives must *personally* attend with their counsel. Experience shows that telephone availability does not substitute for face-to-face contact. Exceptions may be made in cases of hardship, or when it is clear that a person only has a nominal role. Any requests for excused or limited participation should be served and filed at least **FIVE** court days before the conference. A failure to comply with these requirements may result in sanctions, including dismissal in the case of appellants.

11. Help! We have a court-ordered settlement conference in a few weeks, but I just received notice from the clerk's office that my brief is due. This may be a mistake. Ordinarily under rule 8.248(d) of the California Rules of Court, the time to file a brief is tolled from the date a settlement conference is scheduled until the date the clerk mails notice the conference is concluded. Occasionally, when the record on appeal is filed, the clerk's office inadvertently sends a 30-day briefing notice under rule 8.212 without realizing that a settlement conference has been scheduled. If you receive such a notice, contact the Settlement Conference Clerk at

(714) 571-2631, or 4d3settlement@jud.ca.gov for further clarification.

12. What if we settle on our own? The appellant must immediately serve and file a Notice of Settlement with the clerk's office (California Rules of Court, rule 8.244(a)) and also telephone the settlement conference clerk.

13. What happens after a settlement conference? Unless the parties promptly file a Notice of Settlement with the clerk's office or a request to dismiss (California Rules of Court, rule 8.244), the usual practice is to issue a court order within 10 days of the conference returning the appeal to the civil active list and lifting any applicable tolling orders. This restarts the clock on any remaining briefing periods.

14. How much time do we have to effectuate a settlement? You ordinarily have 45 days from the date of notice of your settlement to file a stipulated request for dismissal. The court may extend this time on a showing of good cause. If you don't file a request for dismissal within 45 days of the notice of settlement, the court may dismiss the appeal on its own unless you write a letter to the court stating good cause why the appeal should not be dismissed. (California Rules of Court, rule 8.244(a).)

15. What happens if we don't settle? Confidential information contained in the SCIF's, or disclosed during a settlement conference are for the limited use of the Judicial Settlement Program only. If the case does not settle, the justice or mediator who presided over the conference will not participate in deciding the appeal on the merits.

◆ Part Two: Settlement Rules & Procedures

CALIFORNIA RULES OF COURT (Revised, effective January 1, 2009)

Rule 8.244. Settlement, abandonment, voluntary dismissal, and compromise

(a) Notice of settlement

(1) If a civil case settles after a notice of appeal has been filed either as a whole or as to any party, the appellant must immediately serve and file a notice of settlement in the Court of Appeal. If the parties have designated a clerk's or a reporter's transcript and the record has not been filed in the Court of Appeal, the appellant must also immediately serve a copy of the notice on the superior court clerk.

(2) If the case settles after the appellant receives a notice setting oral argument or a prehearing conference, the appellant must also immediately notify the Court of Appeal of the settlement by telephone or other expeditious method.

(3) Within 45 days after filing a notice of settlement – unless the court has ordered a longer time period on a showing of good cause – the appellant who filed the notice of settlement must file either an abandonment under (b), if the record has not yet been filed in the Court of Appeal, or a request to dismiss under (c), if the record has already been filed in the Court of Appeal.

(4) If the appellant does not file an abandonment, a request to dismiss, or a letter stating good cause why the appeal should not be dismissed within the time period specified under (3), the court may dismiss the appeal as to that appellant and order each side to bear its own costs on appeal.

(5) This subdivision does not apply to settlements requiring findings to be made by the Court of Appeal under Code of Civil Procedure section 128(a)(5).

(b) Abandonment

(1) Before the record is filed in the Court of Appeal, the appellant may serve and file in superior court an abandonment of the appeal or a stipulation to abandon the appeal. The filing effects a dismissal of the appeal and restores the superior court's jurisdiction.

(2) The superior court clerk must promptly notify the Court of Appeal and the parties of the abandonment or stipulation.

(c) Request to dismiss

(1) After the record is filed in the Court of Appeal, the appellant may serve and file in that court a request or a stipulation to dismiss the appeal.

(2) On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.

(d) Approval of compromise

If a guardian or conservator seeks approval of a proposed compromise of a pending appeal, the Court of Appeal may, before ruling on the compromise, direct the trial court to determine whether the compromise is in the minor's or the conservatee's best interests and to report its findings.

Formerly Rule 20, adopted effective January 1, 2003. As amended eff. Jan. 1, 2006. Renumbered Rule 8.244, eff. Jan. 1, 2007.

RULE 8.248 PREHEARING CONFERENCE

(a) Statement and conference

After the notice of appeal is filed in a civil case, the presiding justice may:

- (1) order one or more parties to serve and file a concise statement describing the nature of the case and the issues presented; and
- (2) order all necessary persons to attend a conference to consider a narrowing of the issues, settlement, and other relevant matters.

(b) Agreement

An agreement reached in a conference must be signed by the parties and filed. Unless the Court of Appeal orders otherwise, the agreement governs the appeal.

(c) Proceedings after conference

- (1) Unless allowed by a filed agreement, no matter recited in a statement under (a)(1) or discussed in a conference under (a)(2) may be considered in any subsequent proceeding in the appeal other than in another conference.
- (2) Neither the presiding officer nor any court personnel present at a conference may participate in or influence the determination of the appeal.

(d) Time to file brief

The time to file a party's brief under rule 8.212(a) is tolled from the date the Court of Appeal mails notice of the conference until the date it mails notice that the conference is concluded.

Formerly Rule 21, adopted eff. January 1, 2003. Renumbered Rule 8.248 and amended, eff. Jan. 1, 2007.

Advisory Committee Comment

Subdivision (a). Subdivision (a)(1) requires each party to *serve* any statement it files. (Cf. rule 3.1380(c) [pretrial settlement conference statement must be served on each party].) The service requirement is not intended to prohibit the presiding justice from ordering the parties to submit additional, confidential material in appropriate cases.

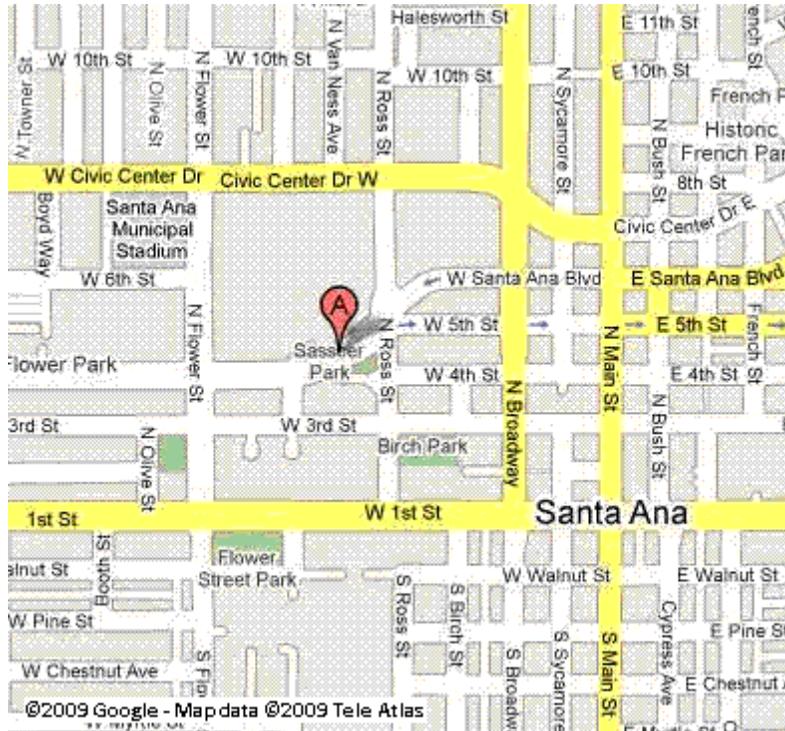
Subdivision (d). If a prehearing conference is ordered before the due date of the appellant’s opening brief, the time to file that brief is not *extended* but *tolled*, in order to avoid unwarranted lengthening of the briefing process. For example, if the conference is ordered 15 days after the start of the normal 30-day briefing period, the revised rule simply *suspends* the running of that period; when the period resumes, the party will not receive an automatic extension of a full 30 days but rather the remaining 15 days of the original briefing period, unless the period is otherwise extended.

Under subdivision (d) the tolling period continues “until the date [the Court of Appeal] mails notice that the conference is *concluded*” (italics added). This change is intended to accommodate the possibility that the conference may not conclude on the date it begins.

Whether or not the conference concludes on the date it begins, subdivision (d) requires the Court of Appeal clerk to mail the parties a notice that the conference is concluded. This change is intended to facilitate the calculation of the new briefing due dates.

◆ Part Three: Directions to Settlement Conference Facilities

Court of Appeal, 601 West Santa Ana Boulevard, Santa Ana, CA, (714) 571-2600



- **Driving south on Santa Ana Freeway (Interstate 5)**

Go south on the Santa Ana Fwy (I-5), until the Broadway / Main Street transition road. Exit at *either* Broadway *or* South Main Street. Proceed south for 1.2 miles until the intersection with Santa Ana Blvd.

Turn right onto Santa Ana Blvd. Continue west on Santa Ana Blvd. for .3 mile until you pass Ross Street, where you will see the courthouse on your right as you cross the intersection. Turn right at the next signal (Parton Street), where you will enter the P6 parking area.
- **Driving north on Santa Ana Freeway (Interstate 5)**

Go north on the Santa Ana Fwy (I-5). Exit at the Santa Ana Blvd. / Grand Ave. exit and make a left turn onto Grand Ave. Continue on Santa Ana Blvd. for 1.4 miles, past Ross Street. where you will see the courthouse on your right as you cross the intersection. Turn right at the next signal (Parton Street), where you will enter the P6 parking area.
- **Driving from John Wayne Airport**

Follow signs pointing to the SR 55 Freeway North (Riverside). Take the SR 55 Freeway North and continue until you reach the Santa Ana Freeway (Interstate 5) going north. Follow "Driving north on Santa Ana Freeway (Interstate 5)" directions above.

PARKING

Handicap parking is located in the P6 public parking structure which is located west of the court off Santa Ana Blvd. Public parking is also available at metered spaces available on the streets surrounding the court.

To park in the P6 structure, take a parking ticket at the gate, which is located to the north of the intersection of Santa Ana Blvd. and Parton St. Park in the first parking structure to your left, or in the open parking lot to your right. There is a self-service cash machine located inside the P6 parking structure, at the front. Insert your ticket and make the payment.

The parking cost is \$1 per half-hour, up to a maximum \$19 per day. The court does not validate parking. Payment must be made by cash only – no credit cards.

Reinsert your stamped ticket at the parking gate as you exit the parking structure.

Questions or Problems? Call the parking office (24 hours): (714) 973-0268.

ADMITTANCE TO THE COURT

As you leave the P6 parking structure, you will see the rear side of the court building, which is immediately to your east. Walk around the building (past the Santa Ana City Hall) and follow the signs to the front entrance, which is located at the corner of Ross Street & Santa Ana Blvd.

A handicap ramp and staircase/pathway are located next the public parking structure and exits onto Ross Street on the north side of the building.