

# **INTERNAL OPERATING PRACTICES AND PROCEDURES FOURTH APPELLATE DISTRICT, DIVISION THREE**

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## **SECTION I INTRODUCTION**

This document describes the general internal operating practices and procedures of this court. These practices and procedures supplement the statutes and rules of court that otherwise govern the court's business.

## **SECTION II STRUCTURE OF COURT AND ORGANIZATION OF STAFF**

Division Three of the Fourth Appellate District is currently authorized eight justices — a presiding justice and seven associate justices. The Chairperson of the Judicial Council periodically assigns pro tem justices to assist the court.

Each justice's staff consists of two or three judicial attorneys and a judicial assistant. The managing appellate court attorney supervises a separate central staff. The managing appellate court attorney and central staff work under the direction and supervision of the presiding justice. They review original proceedings, motions, and extension requests, act as counsel for the clerk's office, and assist in the evaluation of cases. Many of the justices also utilize law student externs who may receive academic credit, without pay, while working at the court.

The assistant clerk/administrator supervises the court's administrative staff under the direction of the presiding justice. The court's administrative staff consists of deputy clerks, librarian, court systems administrators, and office assistants.

## **SECTION III PROCEDURES FOR PROCESSING CASES**

### **A. Appeals.**

1. When an appeal is fully briefed, the clerk's office sends out a notice to the parties who have appeared to give them an opportunity to request oral argument. (Cal. Rules of Court, rule 8.220(a).) Cases are generally scheduled for oral argument in order of the requests. Statutory priorities are enforced, and parties claiming calendar preference must promptly serve and file a motion for preference. (Cal. Rules of Court, rule 8.240.) Non-oral argument cases are similarly assigned in order based on the

date oral argument is waived. Panels, including a justice tentatively designated to author the opinion, are generally assigned on a random rotating basis, subject to the presiding justice's responsibility to ensure that the court's resources are allocated in an effective and efficient manner to fairly and expeditiously resolve disputes, and to promote access to justice for all members of the public. (Cal. Rules of Court, rule 10.603(a).).

2. A confidential written summary is prepared by the authoring justice and provided to each panel member prior to oral argument. The panel may conference on a case before argument and always conferences after oral argument is completed. Thereafter, a proposed final opinion circulates among the panel members for comments and/or approval. Proposed opinions for cases in which oral argument has been waived generally circulate among panel members without a formal conference. All cases may routinely be discussed among the justices and staff members informally on an as-needed basis.

3. All requests for continuances of oral argument must be in writing and contain a particularized showing of compelling circumstances. The written request must inform the court of opposing counsel's position regarding any continuance. No request will be forwarded to the presiding justice until the court is made aware of opposing counsel's position. Counsel's stipulation to continue oral argument is not sufficient in the absence of a showing of compelling cause.

4. Any post-briefing citation of additional authorities must be made by letter to the court, without further legal argument, and served upon opposing counsel. The court retains discretion to strike or disregard late-filed or untimely citations of authority as they deprive the court and opposing counsel of sufficient opportunity to prepare for oral argument.

5. The court offers remote video appearances for oral argument on criminal matters, allowing counsel to appear via video from Division One in San Diego.

#### B. Original Proceedings.

1. The presiding justice assigns on a quarterly basis three justices to serve as the court's writ panel for a three-month period. The writ panel members also rule on motions requiring a three-judge panel.

2. The clerk's office notifies the managing appellate court attorney when an original proceeding is filed. The managing appellate court attorney determines the urgency of the relief sought. The matter is calendared for the weekly writ panel conference if court action is not required before then. Impromptu writ conferences are held when court action is required earlier. The managing appellate court attorney and central staff attorneys prepare written summaries of original proceedings which are provided to the writ panel members before their weekly conference.

#### C. Motions.

1. The court's practice is to hold motions on appeals (Cal. Rules of Court, rule 8.54) in the clerk's office until (1) an opposition has been served and filed, or (2) the time has passed to serve and file an opposition, whichever is earlier. To expedite the processing of an unopposed motion, the moving party should file a stipulation of nonopposition from other counsel.

2. Motions in writ proceedings are not generally held for opposition absent a request by the parties.

#### D. Filings by Facsimile, Email or Other Electronic Means

The court does not accept filings by facsimile, e-mail or other electronic means unless specifically authorized by court order or court rule. Local Rule 5 provides for a voluntary fax filing pilot project throughout the Fourth Appellate District for specified documents, but not briefs.

## SECTION IV JUDICIAL SETTLEMENT PROGRAM

### A. Purpose and Structure.

1. The court has established a judicial settlement program to mediate appellate disputes, and, where appropriate, to establish briefing schedules, to simplify appellate issues, and to address procedural concerns. The court encourages appellate mediations and settlement conferences, and will make its resources available to parties who attempt in good faith to resolve a dispute on appeal.

2. The judicial settlement program is directed by the presiding justice, who appoints a supervising judicial attorney to administer the program and to conduct settlement conferences. In addition, a senior clerk schedules the settlement conferences and provides an interface between the public and the court.

### B. Filings.

All papers pertaining to the judicial settlement program should be filed with the clerk's office at the courthouse, located at 925 No. Spurgeon Street, or mailed to the court at the following address:

California Court of Appeal  
Fourth Appellate District, Division Three  
P.O. Box 22055  
Santa Ana, CA 92702  
Attn: Judicial Settlement Program

These papers ordinarily are retained separately from the other documents filed on appeal, and, where appropriate, are confidential and for the purposes of the Judicial Settlement Program only.

### C. Location and Telephone.

1. The judicial settlement program is physically housed in the Civic Center Professional Plaza, about one-half mile from the Spurgeon Street courthouse. The street address is:

Civic Center Professional Plaza  
500 West Santa Ana Blvd., Room 400  
Santa Ana, CA 92701

2. The telephone number is (714) 564-3600. The fax number is (714) 567-6060. Callers also may use the court's general telephone number: (714) 558-6777.

### D. Settlement Conference Information Forms (SCIF's).

1. The presiding justice may order any pending civil appeal to be scheduled for a settlement conference pursuant to the California Rules of Court, rule 8.248. This decision is based upon the court's review of Settlement Conference Information Forms (SCIF), which are prepared by the parties and filed with the court. Preference is given to any stipulated requests for a settlement conference.

2. Request or stipulation for SCIF orders should be made in writing, directed to the Judicial Settlement Program. Requests may be made in confidence.

### E. Settlement Conferences.

1. **TIMING.** Settlement conferences may be ordered before, during or after briefing. The court generally does not schedule a conference after an appeal has been set for oral argument except for good cause. The court tries to accommodate stipulations for specific day or dates. Parties may ascertain available settlement conference dates by telephoning the settlement conference clerk.

2. **SETTLEMENT CONFERENCE OFFICER.** The presiding justice appoints the person who conducts the settlement conference. In addition to the supervising attorney who manages the judicial settlement program, the settlement conference officer may be an individual justice, assigned pro tem justice, or other judicial attorney.

3. **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.

a. **INSTITUTIONAL LITIGANTS.** If the party is not an individual, then a party representative with full authority to settle must personally attend all settlement conferences in person, in addition to counsel.

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.

c. **TELEPHONIC APPEARANCES.** The court prefers in-person settlement conferences and does not ordinarily grant requests for telephonic appearances. Parties who desire to participate by telephone must promptly serve and file a written request at least five court days before any settlement conference explaining why the attendee's personal presence is impossible or impracticable.

4. **ADDITIONAL PARTICIPANTS.** The court may order other necessary persons (whether or not a party to the appeal) to personally attend settlement conferences. In addition, the conference officer may invite parties to the action who are not parties to the appeal, or any person or entity having interest in the action, to attend. Any party may serve and file a written request for the attendance of such a party or person at least five court days before any settlement conference. No other person may attend a settlement conference without the permission of the conference officer.

5. **SETTLEMENT BRIEFS.** If a settlement conference is held before appellate briefing or record preparation, the conference officer may direct that the parties provide settlement conference briefs, or other appropriate documents, to facilitate a meaningful and productive settlement conference.

6. **PRE-CONFERENCE PREPARATION.** Counsel should confer with their clients in advance of any settlement conference and be thoroughly familiar with the case and prepared to present their contentions in detail. Counsel should review their SCIFs for completeness and accuracy and promptly notify the conference officer of any material changes or omissions at least three court days before the settlement conference.

7. **LOCATION.** Settlement conferences generally are held at the court's settlement conference facilities. (See IVC, above for address.) Settlement conferences also may be held at the Spurgeon Street courthouse. Participants should carefully check the notice of a settlement conference for the correct location.

8. **DURATION.** Participants should be prepared to remain for the duration of the day, or until dismissed by the conference officer. No person who has been ordered to appear may leave without permission of the conference officer. At the conclusion of a prehearing conference, the conference officer may continue the conference to another date to allow for further discussions.

9. CONTINUANCES. Parties who seek to continue a settlement conference should attempt to do so by stipulation, with a mutually agreeable alternative date. Any request for continuances should be made in writing, with reasons stated, and served and filed at least five court days before the conference. Continuances are not granted, except for good cause.

10. EX PARTE COMMUNICATIONS. The conference officer may communicate with any of the parties or their counsel with or without notice to the other parties or their counsel.

11. CONFIDENTIALITY. All discussions and information imparted during the settlement conference are confidential, and the conference officer cannot testify about them.

#### F. "Workout" Conferences.

The presiding justice may order that a prehearing "workout" conference be held for any of the following purposes: (1) to simplify issues on appeal, (2) to establish a briefing schedule, (3) to address procedural questions, issues or outstanding motions or applications, (4) to lay the groundwork for a future settlement conference, (5) to facilitate ongoing settlement discussions, (6) to monitor the progress of a pending settlement or private mediation, or (7) for any other reason or reasons. Unlike settlement conferences, workout conferences are conducted either in person or by telephone. Generally, only counsel, not clients, participate in "workout" conferences.

#### G. Private Mediations.

The presiding justice entertains stipulated requests to stay of appellate proceedings to allow private mediations. Stay requests shall not exceed 60 days except for good cause. Any such stipulated request shall specify the identity of the mediator, the scheduled day or dates for mediation, and any other pertinent factors.

#### H. Stays; Tolling.

Appeals are not automatically stayed merely because parties are ordered to prepare a SCIF, or to choose dates for a settlement conference. The tolling provisions for briefs (Cal. Rules of Court, rule 8.248(d)) commence to run only when the court mails notice of a settlement conference for a specific date and time. Record preparation is not automatically stayed without a court order. The court's policy is to conduct settlement conferences as expeditiously as possible, and to issue a rule 8.248(d) notice lifting any stay or tolling order within 90 days from the date of the notice of the settlement conference.

#### I. Disqualification.

Disqualification of justices is governed by the Canon 3E of the California Code of Judicial Ethics. Justices are not disqualified to hear appeals merely because they rule on settlement conference requests or sign orders pertaining to procedural aspects of the settlement conference process. If appeals do not settle, neither the conference officer nor any other court personnel present at a conference will participate further in the determination of the appeal on the merits. (Cal. Rules of Court, rule 8.248(c)(2).)

#### J. Sanctions.

The judicial settlement program shall not be employed by any party in bad faith or for purposes of delay. The court may impose sanctions for (1) failure to appear at a prehearing (settlement) conference, (2) failure to participate in good faith in the judicial settlement program, or to cooperate in good faith with the conference officer, or (3) failure to comply with a court order or court rule. Sanctions may include monetary awards, or, in the case of an appellant's failure to comply, dismissal of the appeal.

## SECTION V SETTLEMENT NOTICES & STIPULATIONS

### A. Notice of Settlements.

The settling appellants shall immediately serve and file notices of settlement of any pending civil appeal, and telephone the court if the case has been calendared for oral argument. (See Cal. Rules of Court, rule 8.244(a) for other requirements concerning notice of settlements.) Settling appellants also should e-mail or telephone the settlement conference clerk if the appeal has been placed in the judicial settlement program.

### B. Stipulated Requests for Dismissal.

Counsel should promptly serve and file stipulated requests for dismissal because of settlements. The stipulation should specify the allocation of costs on appeal and whether the remittitur is to issue immediately. (Cal. Rules of Court, rule 8.244(c).)

### C. Stipulated Requests for Reversal. (Code Civ. Proc., §128, subd. (a)(8).)

Stipulated requests for a reversal of the judgment ordinarily are heard by the writ panel, unless the appeal already has been assigned to a panel for decision.

1. GOOD CAUSE. The parties must provide a sufficient showing to satisfy the statutory criteria in Code of Civil Procedure section 128, subdivision (a)(8). A copy of the judgment shall accompany the motion.

2. JOINT DECLARATION. The motion shall include a joint declaration of counsel that (1) describes the parties and the factual and legal issues presented at trial; (2) indicates whether the judgment involves important public rights or unfair, illegal or corrupt practices, or torts affecting a significant number of persons, or otherwise affects the public or a significant number of persons not parties to the litigation (if the judgment is against a state licensee, the declaration must also disclose whether it exposes such person to any possible disciplinary proceeding); (3) discloses whether the judgment sought to be reversed may have collateral estoppel or other effects in potential future litigation and, if so, whether any third parties who might be prejudiced by stipulated reversal of the judgment have received notice of the motion and (4) discloses whether the judgment involves discretionary determinations by the trial court that cannot be reversed by stipulation of the parties alone without independent appellate review (see, e.g., *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123; *Stewart v. Stewart* (1955) 130 Cal.App.2d 186, 193.)

3. NOTICE TO PARTY. The joint declaration shall include a certification that a copy of the stipulation and joint declaration has been delivered to the client. The certification need not include the address of the party notified. In a class action, the copy required need be delivered to only one represented party.

## SECTION VI ETHICAL SCREENS

The court maintains an ethical screening process for its judicial attorneys, judicial assistants, clerks, externs and other staff members in order to maintain and preserve public confidence in the judicial system. The purpose of this process is to inform the justices at the earliest possible opportunity of any circumstances of an actual or potential conflict of interest involving a court staff member that could give rise to the need for an ethical screen. If applicable, the ethical screen is promptly implemented.