

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

**General and Trial Procedure Guidelines
DEPARTMENT CX105**

JUDGE THIERRY PATRICK COLAW

CLERK: Pearl Rief

COURT ATTENDANT: Gracie Valenzuela

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Welcome to Department CX105!

We want your time with us in CX105 to be a professionally satisfying experience.

Limiting telephone calls to the court will help us process your case and paperwork faster. If you do have to telephone the court, however, please have your case number and case name available.

I. GENERAL PROCEDURES:

Please refer to the Complex Civil Department Guidelines.

In order to facilitate the progress of your case and assure its timely disposition, the court has set forth the following procedures. Counsel will avoid many pitfalls and embarrassments by reading and becoming familiar with them:

A. The court expects counsel to cooperate with each other to the fullest extent and to treat each other and courtroom staff with genuine civility and courtesy. Counsel must comply with the meet and confer requirements of CRC Rules 3.724 and 3.727.

B. Law and Motion: Hearings are set on Friday mornings at 10:30 a.m. This department does NOT require online reservations prior to the filing of the moving papers. Counsel may submit on their moving papers without an appearance if the court is notified. The court will endeavor to post Tentative Rulings on the Internet by 3:00 p.m. the Thursday before the Friday hearing date. If no one appears for argument, then the tentative ruling will become the final ruling on the matter, effective the date of the hearing.

1. Pleading Wars Discouraged: The law in California generally provides for a standard of liberal amendment of pleadings. This court expects counsel to meet and confer by phone or at a minimum by letter to discuss the purported need to demur, move to strike pleadings, or to amend pleadings. This court is not interested in conducting a course in pleading practice by way of law and motion on demurrers, motions to strike, and amending of pleadings.

California is a notice-pleading state. With the exception of pleading fraud, punitive damages, and a few other causes of action or claims which require specificity, a complaint must contain only “a statement of the facts constituting the cause of action *in ordinary and concise* language.” California Code of Civil Procedure Section 425.10 (1) emphasis added.

Plaintiffs should consult and use “CACI” (California Civil Jury Instructions) as a checklist of the substantive law and elements of causes of action in civil actions as well as the Pleadings chapter in Witkin, California Procedure. See also California Practice Guide Civil Procedure Before Trial, Weil & Brown, The Rutter Group, Chapters 6 and 7 for information on drafting complaints and attacking pleadings.

2. Discovery Motions: A good faith meet and confer process is generally required in all discovery disputes. Exchanging vituperative, accusatory, or nasty letters, emails, or phone calls is not meeting in good faith. If you are going to ask the court to solve your dispute it surely must be evident from your papers that you have tried in good faith to truly resolve the dispute. Note: An unreasonable number of discovery disputes will likely result in the appointment of a Discovery Referee under CCP § 639.

C. Ex Parte Applications: These are heard daily at 1:30 pm. Applications for relief must be for legitimate emergencies only, *i.e.*, some great urgency and irreparable harm must be apparent.

D. Status Conferences: If possible, the parties should submit a joint Status Conference Statement five court days prior to the hearing. Judicial Council form CM-110 must not be used. Counsel should include in the Statement a discussion of the applicable subjects set forth in CRC 3.727, including a status of the pleadings.

E. Continuances: One trial continuance will be permitted by stipulation; thereafter, most other requests for trial continuance will be by *Ex Parte* or noticed motion only.

F. Settlement of cases with a PAGA cause of action: Under Cal.Labor Code § 2699(1), the court must review and approve any penalties sought as a part of a proposed PAGA penalties settlement agreement. **A regularly noticed motion is required.** In conformance with Labor Code § 2699(i), notice must be given to the Labor and Workforce Development Agency.

II. TRIAL PROCEDURES

Trials are set on Mondays at 9:30 a.m.

Counsel shall jointly conduct an Issues Conference at least 10 days before trial in compliance with Orange County Rule 317.

A. Standard Trial Procedures:

1. The Pre-trial Conference [“PTC”]:

Depending on the case, the court normally will hold a detailed PTC either 30 days before the day of trial or 14 days before the trial depending on the case type, trial length, etc. The following issues/topics are typical for scheduling and discussing in the Pretrial Conference:

(a) Motions in Limine: Read and be thoroughly familiar with the opinion and holding in *Kelly v. New West Federal Savings* 49 Cal. App. 4th 659 [Sept. 1996]. This seminal case sets forth the current law on motions in limine. Motions to exclude “all hearsay evidence” or “all cumulative evidence” or “evidence not disclosed in discovery” and the like are viewed with the disdain described in *Kelly*. Motions in limine are usually intended to exclude specific items of evidence not broad categories of evidence. Be specific and concrete in what you want excluded.

(b) Order of Proof: Who are the witnesses, when are they expected to testify, and how long will be direct and cross? This information is vital and should be as precise as possible in order to accurately estimate the actual number of days of trial for the jury or the court. As you probably know, jurors get very upset and frustrated when we keep them longer than we promised for trial days.

2. Voir Dire of the Jury:

- Each party will be permitted to do a mini-opening statement of 5-7 minutes early in voir dire in order to give the jurors a short “road map” of the evidence and give them a frame of reference for answering your questions. This will be the case whether we use the traditional method (brief questioning by the court first, then questions by Plaintiff counsel then Defense counsel at length) or use a questionnaire which is often preferred by counsel and used by the court in long cause cases [10+ days]. The court will not *impose* a questionnaire under those circumstances, but will usually look upon such use of a questionnaire favorably. The average questionnaire is usually about 8-10 pages in length with many questions having subparts and usually quite detailed.
- The court uses the traditional “eight-pack” method of jury selection.

The Eight-Pack Method of Jury Selection

(a) The clerk will call 24 names at random (eight chairs in front of jury box, 16 in jury box). [Note: the trial attorneys will be given the random list ASAP in order to foresee the order of jurors to be called.]

(b) After voir dire by the court, counsel will voir dire all 24 prospective jurors (for the cause phase of voir dire).

(c) Following for cause voir dire, counsel will exercise their peremptory challenges on prospective jurors 1-16 in the jury box.

(d) If seat #5 (for instance) is empty, prospective juror #17 fills it. (Take from seats 17 to 24 in that order to fill empty seats in the jury box.)

(e) Continue with peremptory challenges until there are no prospective jurors in seats 17 to 24.

(f) The clerk will call eight more names to fill the “eight-pack” seats. Voir dire for cause commences as to these eight persons, only, and then counsel will resume peremptory challenges until concluded or both sides pass in succession.

(g) Usually 16 jurors are sworn and impaneled. Alternates are not selected until all the evidence is in. After final arguments the alternates are drawn by lot.

3. Witnesses

A. It is the responsibility of all counsel to arrange the appearances of witnesses, to confer among themselves during the trial as to when witnesses will be needed, to advise the court at the earliest opportunity of any anticipated problems with the presence of witnesses, and to advise witnesses of the appropriate manner of testifying.

The court usually orders a 48-hour notice time among counsel for expected witnesses to testify in court.

B. Prior to commencement of trial, counsel shall lodge all original depositions expected to be used in trial with the clerk. This is often overlooked by counsel, but is still important. You do not want to try to use a deposition to impeach, and then fumble around for the court’s original while the jurors looked on in dismay at the delay.

C. All parties are responsible for paying in advance all jury fee deposits and court reporter *per diem* fees each day of trial. If the parties obtain a daily transcript more than once then the court will likely order preparation of a daily transcript from then on, day-by-day, until the end of trial and order the costs of the “daily” to be paid by the parties as appropriate under the circumstances. Court reporters are not always available in a timely fashion for civil trials for budget reasons since 2015, thus you should consider the advisability of having a private reporter available to report the trial. Experience has shown that the cost differences are usually insignificant.

4. Exhibits [Counsel and their staffs really need to read this in detail before trial]

Preparing Exhibits for Trial

(a) Exhibits are often an afterthought for inexperienced counsel and can be problematic in the extreme. Attention to detail is critical.

(i) Counsel should agree on a marking system early in discovery. Once a number has been assigned to a particular document, only that number should be used throughout discovery and the trial. At the outset of the case, blocks of numbers should be agreed to by each party for this purpose; it does not matter that this will result in unused numbers.

(ii) Only numbers should be used. It is not appropriate to designate plaintiff's or defendant's exhibits.

(iii) Page numbers shall be placed on **all** pages of multi-page documents. Do not shortcut by grouping a number of different documents together under a single exhibit number, merely using different page numbers to differentiate documents.

(b) At the Issues Conference, counsel should jointly prepare an Exhibit List. **Counsel shall avoid duplicates.** Each exhibit should be listed by exhibit number together with a very brief description, including the date of the document or a notation that the document is undated. Copies should be made of the Exhibit List for the court, the clerk, the reporter and each counsel.

(i) If there are more than a dozen exhibits, and to the extent that exhibits are standard size and not too bulky, they should be placed in 3-ring binders with tabbed dividers. Each tab should bear the corresponding exhibit number. All original exhibits must have the court exhibit tags filled out and attached to the exhibit. [Failure to do this really and understandably upsets clerks.] Green exhibit tags are required.

(ii) All original exhibits, with exhibit lists, will be given to the clerk on the day of the trial. Prior to jury selection, two (2) sets of the exhibits in 3-ring binders [one copy for the court and the originals with green exhibit tags for the witness dock], the complete exhibits list, and any impeachment documents [see (e) below] shall be submitted to the clerk.

(c) If counsel plan to use enlargements of exhibits (commonly referred to as "blowups") or transparencies for use with an overhead projector, such blowups and transparencies should not be used as original exhibits. Instead a normal size paper version of the exhibit should be marked and treated as the official exhibit. Blowups and transparencies are informally marked with the same exhibit number and referred to by the same exhibit number during trial.

(d) If you plan to use a video exhibit, or videotaped depositions, the court should be advised at the earliest opportunity since the court's permission is required before videos, tape recordings, overhead projectors and the like may be used in trial. It is the responsibility of counsel to set up and test the necessary equipment before trial.

(e) If counsel intends to use documents for bona fide impeachment, copies of such documents shall be delivered to the clerk in a sealed envelope marked “impeachment documents” with the name of the submitting party prior to the commencement of the trial.

(f) The court recommends moving exhibits into evidence as soon as admissibility has established, while they are freshly in the mind of all participants.

5. Jury Instructions (CACI instructions are preferred)

A. The court pre-instructs the jury as to preliminary matters immediately before formal opening statements. In pre-instructing, court will generally read CACI 100, 101, 102, 103, 106, 107, 112, 113, 114, 116, 200, 202, 208, 219, 220 and 221. If any party desires that the court give additional instructions at the outset of the case, counsel will so advise the court prior to completion of jury selection.

B. All proposed jury instructions, CACI or otherwise, special findings and verdict forms [as near as can be reasonably determined at this stage from the nature of the case] shall be submitted to the clerk prior to the presentation of evidence.

6. Judgments:

Upon reading of the Verdict and Discharge of the jury, counsel for the prevailing party is instructed to prepare the Judgment, which must include the exact wording of the Verdict. This must be served upon opposing counsel and lodged with the court in Department CX105 in a timely fashion. The court will hold the judgment for five [5] days to allow for possible objections.

B. Additional Trial Tips:

Counsel shall instruct their clients and witnesses as to proper behavior around jurors and warn them about engaging in any conversation, smiles or other interaction with, or in the vicinity of, jurors or in areas of the courthouse where jurors are likely to be present. Except when we are in session in open court, the jurors or potential jurors are to be ignored. The court will explain this customary conduct to the jurors to ensure fairness to all.

1. All witnesses, except children, are to be addressed only by their last name.
2. Counsel must request permission to approach a witness or diagram, etc., near the witness, and should retreat after the purpose has been accomplished.
3. Objections, statements, and arguments are to be addressed to the court rather than opposing counsel or witnesses. Speaking objections are prohibited.