

Sonoma County Best Practices for Civil Litigation

The following recommended Best Practices for Civil Litigation in Sonoma County, has been prepared by the Sonoma County Bar Association, Bench Bar section. Although some elements have been encouraged or reviewed by Sonoma County Civil Department Judges and the Court Operations Manager-Civil Division, the opinions expressed are those of the Bench Bar Section. We are living in a time of reduced Court funding and personnel, and an ever expanding need for Court services. Careful consideration of these offered Best Practices will allow our Courts and staff to do more with less, and we believe make your practice more effective, saving you and your clients time and money. Accordingly, this document is an effort to make more efficient use of Judicial Resources and Court staff time, and so that attorneys can assist with the orderly administration of justice.

1. Civility

The State Bar of California has issued civility guidelines. Civility in the practice of law and adherence to these guidelines is expected by the Sonoma County Superior Court. There is a link to the California Attorney Guidelines of Civility and Professionalism on the Court's homepage (under "Quick Links") at: <http://sonoma.courts.ca.gov> .

See also Weil & Brown, *Civil Procedure Before Trial*, Standards for Professionalism, + § 9:346.1 (Rutter Group).

2. **Civil Motion Filings**

2.1 **Law and Motion Filings with the Court Clerk's Office. *Hall of Justice, 600 Administration Drive, Santa Rosa, CA 95403***

The Court's Clerk's office and Bench Bar have worked together to facilitate civil filings. See attached Civil Guidelines and Recommendations. "Sonoma County Court Clerk's Office Civil Filings Recommendations; End of Day Filing."

<http://www.sonomacountybar.org/>.

The Clerk's Office will assign the first available date/time. Accordingly, please leave the date blank.

2.2 **The addresses of the Civil Departments are as follows:**

Departments 16/17: Empire College Annex, 3035 Cleveland Avenue, Santa Rosa, CA 95403.

Departments 18/19: Civil and Family Law Courthouse, 3055 Cleveland Avenue, Santa Rosa, CA 95403.

2.3 **Trial Motion Filings. See § 13 Pretrial Matters & Commencement of Trial**

3. **Informal Resolution of Law & Motion Matters**

The Superior Court has revised Local Rule 5.1(C)(1) to add a requirement that the moving party immediately notify the assigned Judge's judicial assistant when a Law and Motion matter is resolved, dismissed, settles, or becomes moot for any reason so the matter can be dropped from the calendar. This allows the Court's limited resources and research attorney time to be used on matters that are still pending. It may also allow additional Motions to be placed on the Law and Motion calendar. All parties benefit from strict adherence to this rule.

4. Case Management Conference (CMC)

Case Management Conferences are important! All counsel and parties should read and comply with the following rules applicable to Case Management Conferences: Local Rule 4.2 and the California Rules of Court, Rules 3.720 through 3.730.

The Clerk of the Superior Court sets a CMC date when the complaint or petition (first paper) is filed in a civil case. The Notice of Case Management Conference prepared by the Clerk must be served on all parties with the summons and complaint. A CMC must be held within 180 *days* of the date the complaint is filed, pursuant to the California Rules of Court, and is usually set within 120 days in Sonoma County.

The specific matters to be considered at a CMC are listed in Rule 3.727. Be prepared to discuss all of these matters at your initial CMC.

Please review the California Rules of Court and comply with Rule 3.724, which requires all counsel to **meet and confer no later than 30 days before** the initial Case Management Conference in each case. Rule 3.724 contains a long, specific list of matters that all counsel (and any self-represented party) must discuss before the CMC.

After meeting and conferring, be sure to file a complete and informative Case Management Conference Statement (CM-110) that complies with Rule 3.725 **no later than 15 calendar days before the** Case Management Conference. Judges read Case Management Statements carefully and your judge needs complete information to help the Court manage your case. If each CMC Statement is thorough, the Court may issue a Tentative Ruling that does not require counsel to appear in person, followed by a Notice of Trial assigning a trial date.

Accordingly, be sure to include:

(A) Dates on which you will not be available for trial. **It is HIGHLY probable that your case will be set for trial at the initial Case Management Conference.** Requests to continue trials are time-consuming and expensive for the Court and the parties. See Sec. 12 below, **Trial Continuances.**

(B) **Let the Court know if you are planning to file dispositive motions, especially Motions for Summary Judgment** allowing the Court to schedule the trial date to accommodate the Motion. This will allow time for dispositive motion(s) to be heard before trial, and it will help reduce request(s) to continue the trial. (See Section 12 below, Trial Continuances).

(C) **Tentative Rulings:** Please review Local Rule 4.2, subsection C., which states that **three (3) court days** before any Case Management Conference, the Court will issue a pre-approved disposition of each matter on the CMC calendar. Check the Court's website <http://sonoma.courts.ca.gov> or call (707) 521-6881 to hear the tape-recorded disposition for your case on the day the tentative disposition is posted. The Court may or may not require the parties to appear at the scheduled Case Management Conference. If you disagree with the pre-approved disposition and/or wish to appear in court when the parties to your case have not been ordered to appear, **you must notify the Judicial Assistant and all parties at least forty-eight (48) hours before the Case Management Conference.**

5. Ex Parte Applications (CRC Rules § 3.1200 and Local Rules 5.6, 5.8 and 17)

A good beginning point for counsel is Weil & Brown, *Civil Procedure Before Trial*, Ex Parte Motions, § 9:345, et seq. (Rutter Group). Judges throughout California expect counsel filing ex parte applications to demonstrate “there is a bona fide emergency such that the lawyer’s client will be seriously prejudiced” if the regular Noticed Motion procedures are followed (Local Rule 5). Sonoma County Judges will not grant an ex parte application absent a showing of such exigent circumstances. Each Sonoma County Civil Department has time allotted one day each week to Ex Parte applications, with Fridays rotating -- see Civil Division Weekly Calendar at the Court website: <http://sonoma.courts.ca.gov/online-services/calendars/civil>. Counsel are required to present Ex Parte applications to the single assignment Judge responsible for that case. Exceptions are unlikely. In the event of an extreme emergency, Sonoma Superior Court has a fillable form to submit with an ex parte application presented to a judge in a department other than the department to which the case is assigned. Declaration in Support of Urgent Ex Parte Application (Form #CV-40) at <http://sonoma.courts.ca.gov/forms-filing>

6. Orders Following Tentative Rulings; Local Rules 5.5 and 5.8

Attorneys are encouraged to bring to the Hearing, an Order in the proper form identifying the Department and appearing and/or non-appearing Attorney/Party with the text of the Tentative Ruling attached as Exhibit A. Either party (prevailing or non- prevailing) may appear with the Order. Counsel should call the appropriate Department and opposing counsel, to advise them that you intend to appear and present this Order, even if neither party objects to the Tentative Ruling.

To receive your Order as expeditiously as possible and to assist the Court and Clerk, please bring your proposed order to the hearing or submit it as soon as possible thereafter -- and

ALWAYS submit it within ten (10) days (whether or not “approved as to form” by other counsel.) Include with all submitted Orders, a form Proof of Service showing all parties and all necessary self-addressed stamped envelopes.

7. No Fee Mediation

Due to lack of available funding the current program has been discontinued. Civil Departments will continue to explore other alternate dispute resolution options. For information contact José Octavio Guillén, Court Executive Officer, Sonoma County Superior Court, 600 Administration Drive, Room 106-J, Santa Rosa, CA 95403.

8. Mandatory Settlement Conferences (MSC)

The Court believes that the Mandatory Settlement Conference (MSC) is an essential component of efficiently delivering justice in civil cases. To that end, the Court has organized a panel of experienced litigators who review the parties’ MSC Statements, conduct the Mandatory Settlement Conference, and make a report to the Court regarding the settlement status of the case. The volunteer settlement panelists devote a significant amount of time and energy to make this program a success. Therefore, the Court expects each party that participates in a court-ordered settlement conference to closely follow the California Rules of Court (Rule 3.1380) and Local Rule 4.7. The Court expects the appropriate **person or entity with authority to settle the case** to attend the Conference, and the Court expects counsel to timely submit informative MSC Statements to the Court and the panelists before the Conference. The parties and counsel should consult the Court’s website to find the assigned conference panelists’ contact information and

submit the CMC Statement promptly directly to them. See:

sonoma.courts.ca.gov/divisions/civil#settlementconf and

sonoma.courts.ca.gov/online-services/tentative-rulings/civil-settlement-conferences

9. Motions for Summary Judgment/Adjudication, and Evidentiary Objections

The rules governing Summary Judgment and Summary Adjudication papers require strict adherence to the procedures set out in the California Rules of Court with respect to lodging objections to evidence cited in support of, or in opposition to, the Motion (Rule 3.1354). Failure to observe the requirements for timely filing, formatting, and submission of a proposed order addressing the objections may result in the Trial Court ignoring the objection, as well as the waiver of a party's ability to pursue those objections on appeal.

Although the procedural rules governing dispositive motions are not applied to other motions, it is always advisable for counsel to highlight evidentiary problems with the adversary's position in a separate document that accompanies the other papers, identifying the objectionable statement or material and clearly stating the grounds for the objection. Doing so not only makes the Court's review easier, but also maximizes the chances that the evidentiary objections will receive the Court's full attention when ruling on the motion before it. Overuse of certain objections (e.g., relevance) is not a best practice and dilutes the meritorious objections.

10. Sonoma County Discovery Facilitator Program

10.1 The policy of the Sonoma County Superior Court is to encourage the use of the Discovery Facilitator Program in discovery disputes.

See <http://sonoma.courts.ca.gov/divisions/civil#discovery>

While Local Rule 4.14 provides that participation in the Program is deemed to satisfy a party's "meet and confer" obligation, counsel should be mindful that participation does not excuse a party's statutory obligation to make and document meet and confer efforts prior to filing a discovery motion.

All papers relating to the participation in the Discovery Facilitator Program shall be presented to the assigned Judge's judicial assistant. A list of the qualified discovery facilitators is maintained by the Superior Court.

10.2 Participation: Counsel for the parties may stipulate for referral to the Program, or the Court may require participation in the Program. The following instances will lead to mandatory participation:

1. Any time after the filing of a discovery motion, the Court may in its discretion order the dispute into the Program. A party not desirous of submitting the motion to the Program may file with the Assigned Judge's judicial assistant a "Notice of Intent to Opt Out of the Program," and the order issued under this subparagraph shall be vacated.
2. A party who desires using the Program may request referral to the Program in paragraph 19 of the Case Management Statement. At the CMC, the Court shall determine whether the dispute or potential dispute shall be included in the Program.
3. A party who wishes to have a discovery dispute included in the Program before the next Case Management Conference (CMC), or in the event there is

no pending CMC, may bring a motion in accordance with Local Rule 5 for referral to the Program. The motion must be accompanied by a declaration setting forth a basis for good cause for inclusion in the Program.

10.3 Selection of a Facilitator, Compensation and Resolution are all discussed fully in Local Rule 4.14: See <http://sonoma.courts.ca.gov/divisions/civil#discovery>

11. Expedited Jury Trials and Stipulations to Reduce Jury Size

11.1 Expedited Jury Trials. Counsel and parties to a civil action should know that they can stipulate to an expedited jury trial to save considerable time and money. All parties must agree to the procedure. Civil Code section 630.01 defines an expedited jury trial as a “binding, consensual jury trial before a reduced jury panel and a judicial officer.”

All Sonoma County Civil Division judges believe expedited jury trials can be useful in many kinds of civil disputes. An expedited jury trial almost always results in a final judgment, as appeals and Post-Trial Motions are allowed only on very limited grounds. See Civil Code section 630.09. An expedited jury trial is heard by a judge and a jury. The expedited jury trial procedures can be made very flexible to allow the parties to save time and money, while still providing a final judicial resolution of their case.

The complete expedited jury trial procedure is set forth in California Civil Code sections 630.01 through 630.10, and is explained in greater detail in the California Rules of Court, Rules 3.1545 through 3.1552. The Local Rules of the Sonoma Superior Court (Rule 4.10, subsection A), state that expedited jury trials will be governed by Civil Code sections 630.01, et seq. and the California Rules of Court, Rules 3.1545 through 3.1552.

There is a Power Point presentation on Expedited Jury Trials available from the Sonoma County Bar Association website: <http://www.sonomacountybar.org/?s=expedited+jury>

There are also *California Bar Journal* articles about Expedited Jury Trials at the State Bar of California website: <http://members.calbar.ca.gov/search/site.aspx?q=Expedited%20jury>

11.2 Reduced Juries; Peremptory Challenges. Counsel and parties to a civil action should also know that they can stipulate to a reduced jury size (no less than eight (8) jurors) to save time and money, without giving up any other procedures or appeal rights. The number of peremptory challenges per party is *typically* not reduced by stipulating to a reduced jury.

12. Trial Continuance Rules

The California Rules of Court, Rule 3.1332 and Local Rule 4.9 address civil trial continuances.

Trial dates are firm and continuances are generally disfavored. Counsel is expected to list their unavailable dates in every Case Management Statement to avoid the “surprise” of being assigned a date conflicting with another matter. See Section 3 above (Case Management Conferences).

There are three methods available to request a civil trial continuance in Sonoma Superior Court. All three methods require “Good Cause,” as defined in the California Rules of Court, Rule 3.1332, subsection (c). Because any trial continuance requires a written showing of good cause, the papers must contain a sufficient showing, *including facts based on personal knowledge*, no matter which method you choose. However, the procedures and the required fees vary. Always check the current Fee Schedule online at <http://sonoma.courts.ca.gov> to be sure you have the correct amounts:

12.1 Formal Noticed Motion to Continue Trial – Local Rules 4.9 and 5

Filing fee + Continuance fee + Court Reporter's Fees

12.2 Ex Parte Application to Continue Trial - See also Local Rules 5.6 and 5.8

Ex parte fee + Continuance fee

Each civil department hears ex parte applications at 3:30 p.m. one day each week.

Appear in the department to which the case is assigned. Check the Civil Division weekly schedule at <http://sonoma.courts.ca.gov/online-services/calendars/civil>

12.3. Stipulation of counsel and Order submitted to Judicial Assistant - Good Cause must be Stated *including facts based on personal knowledge and Apparent*, see also Local Rule 5.3.

Continuance fee only.

13. Pretrial Matters & Commencement of Trial

The Court has established uniform pretrial procedures for its four civil courtrooms - see, Local Rule 4.10. Counsel are expected to comply with the meet and confer obligations, filing deadlines, and timelines for exchanging opening exhibits and similar information set forth in Rule 4.10. In addition, each civil trial department has its own set of "Trial Orders of the Court" which are sent to the parties with the trial setting notice. Counsel are expected to comply with these Rules and Trial Orders allowing judges to manage their courtrooms in an efficient manner, and not wasting juror's time. Please note that although Sonoma County has a single assignment judge system, at the Trial call another department can be assigned the case for Trial.

Trial Motions will be filed with the appropriate Trial Department.

14. Sonoma County Trials

a. Departments 16 and 17 follow the schedule of 8:30 am to 1:30 pm with brief snack breaks. Departments 18 and 19 follow the full day schedule with daily starting time variances. Because the Judges attempt to share trial loads and have no extended dark days, you may be assigned to a Court room for Trial different than your single assignment Judge.

b. The uniform custom in Sonoma County Civil Departments is that the attorneys are to provide to Jurors, Daily, coffee/tea and muffins/sweet rolls. Each side will alternate by the day or week. Some services supply coffee “tanks” and bill by the week.

15. Juxtaposed Expert Witnesses

In some Complex Litigation, e.g. multiparty construction matters, it may be appropriate to consider having the Defense Experts testify at trial immediately following the Plaintiff’s Experts. This is of course entirely discretionary with the parties and the Court. Some Judges believe this could be more efficient evidentiary presentation in appropriate circumstances.

**SONOMA COUNTY COURT CLERK'S OFFICE CIVIL FILINGS
RECOMMENDATIONS**

**Report of the Sonoma County Bar Association, Civil Bench Bar Section's Clerk's Office
Liaison Subcommittee**

The Subcommittee and the Clerk's Office request your assistance to keep pace with increasing customer demand on the Clerk's office which is experiencing diminished personnel resources due to budget reductions.

I. Clerk's Office

- a) Each law office may submit and receive over-the-counter, certain documents including one Writ or one Abstract per day, once the Judgment is in the Court's computer. This resolves concerns including about timely securing Writs and Abstracts. Local Rule 18.11.
- b) If you need your Complaint filed and a copy returned immediately, the Clerk's office will allow you to file a Complaint over the counter. However, the Clerk's office cannot allow more than one Complaint to be filed over the counter by any one runner/law firm each day. Local Rule 18.11A.
- c) Motions, Oppositions, Defaults and Requests for Dismissal, if proper in form, may also be filed over the counter.

II. Attorneys Self-Help

- 1) Attorneys can help improve Clerk office efficiency and therefore overall turnaround time:
 - a) Make sure names match and the information is accurate:
 - 1) For example, on subsequent pleadings and motions, (i.e. Amended Complaints), and especially on Substitutions of Attorneys;
 - 2) On Judgments. This has traditionally been a source of disappointment for attorneys who do not fill in correct dates and amounts and neglect to conform names on proposed Judgments to the names appearing in the caption.
 - b) If you are going to wait until just a few days before a Hearing to continue it, proceed to the Judicial Assistant for the assigned Judge with a copy of your Stipulation/papers; do not simply drop the Stipulation in the Routine Filing box.

2) **Judgments:**

The more laborious the Clerk's office review process, the longer it takes to process Judgments, and the greater the opportunity for confusion and error.

Repeating verbatim a lengthy Ruling or multi-part Stipulation and concluding with "It is so Ordered" is discouraged. The Clerk must read multiple pages when a Judgment is submitted for \$XXX as against Doe, or Injunctive relief against Moe, but the operative Order language is buried in the text. If at all possible, the Judgment proposed by counsel based on a Ruling should conclude with the "bullet point" decision(s) stated in the conclusion.

Recommendations:

Judgments.

- 1) After whatever language is appropriate in the body of the Judgement or Stipulation, conclude with: "Judgment shall be for \$XXX against Defendant Doe"
- 2) For Injunctions: "As to Defendant Moe, the following shall occur, [list]:"
- 3) A place at the bottom for the Judge's signature and Date.

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**THE CIVIL CLERK'S OFFICE OF THE SUPERIOR COURT
OF CALIFORNIA, COUNTY OF SONOMA, REQUESTS
YOUR ASSISTANCE AT THE END OF THE DAY**

NEW OPTION: SAME DAY FILING; NEXT DAY RETURN- GUARANTEED
(FOR LOCAL RULE 18.11 "OVER THE COUNTER" DOCUMENTS)

SAVE TIME: NO WAITING IN LINE

**GAIN CERTAINTY: YOUR DOCUMENT WILL BE FILED AS OF THE DATE
PRESENTED AND AVAILABLE, WITHOUT WAITING, BY NOON THE
FOLLOWING COURT DAY**

With diminishing staff and increasing workloads, the cooperation of the local legal community is vital to our strategy of meeting the challenge of delivering quality service with fewer resources. At no time is this challenge greater than the last hour of daily operation, i.e. from 3:30 PM to 4:30 PM, when many runner services schedule their delivery to the Clerk's Office, creating backlog at the over-the-counter filing window. Court runners are often under the impression that they are required to return endorsed filed copies immediately, when in reality, waiting a day or two for return of the conformed copies does not present an issue for the attorney submitting the document.

The Clerk's office has recently adopted a new voluntary protocol called "*expedited filing and return*" for the expedited processing of documents. Under this procedure, if a document is "fileable" over the counter per Local Rule 18.11, the submitting party agrees the document may be stamped "received" and may be left for processing by the clerk the next day. Documents left in this manner would be available for pick-up by noon the business day following the date they were dropped off. When processed, they will be filed in the Court's file as of the date they were dropped off. This expedited filing process is available for any document designated as suitable for "over-the-counter" filing in Local Rule 18.11; it would not be available for matters deemed "routine" filing matters in Local Rule 18.11.

It would be of great assistance if you informed your runner service that you are willing to allow "*expedited filing and return*" of your documents. This would alleviate the artificial time pressure otherwise created and free up the clerks at this crucial time so they can process documents which are truly time-sensitive.