

Superior Court of California

County of Orange

HONORABLE DAVID J. HESSELTINE
DEPARTMENT C23

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Welcome to Department C23! To facilitate your case's orderly progress, the court expects you to follow the procedures and guidelines set forth below.

CALENDAR INFORMATION (unless otherwise specially set by court)

- A. **Jury/Court Trials:** Trial Call is on Mondays at 9:00 a.m. Full trial days are held on Tuesdays, Wednesdays, and Thursdays from 9:00 a.m. to approximately 4:15 p.m.*
- B. **Law and Motion:** Thursdays at 2:00 p.m.**
- C. **Ex Partes:** Mondays through Fridays at 9:00 a.m. **
- D. **Mandatory Settlement Conferences:** Fridays at 9:00 a.m.*
- E. **Case Management Conferences:** Mondays at 9:30 a.m. **
- F. **Order to Show Cause Hearings:** Mondays at 9:30 a.m. **
- G. **Alternative Dispute Resolution Conferences:** Mondays at 9:30 a.m. **
- H. **Status Conferences:** Mondays at 9:30 a.m. **

* In-Person proceeding per Code of Civil Procedure section 367.75 and Orange County Local Rule 375.

** Remote proceedings per Code of Civil Procedure section 367.75 and Orange County Local Rule 375.

GENERAL PROCEDURES

A. Remote Versus In-Person Proceedings:

Non-evidentiary proceedings: These are proceedings at which live, oral testimony is not expected, such as Law and Motion, Ex Partes, CMCs, OSC, and other similar proceedings. Such proceedings will be conducted remotely and heard by Zoom videoconferencing pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Parties¹ can access the Department's virtual courtroom at the scheduled date and time by visiting the Orange County Superior Court website at <https://www.occcourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information—Civil Unlimited and Complex" and "Guidelines for Remote Appearances" are available at the same link and will be strictly enforced. Parties preferring to appear in-person for non-evidentiary proceedings may do so pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375.

Public Access: The courtroom remains open for all non-evidentiary proceedings conducted remotely. Members of the media or public may obtain access to such proceedings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150, AND ORANGE COUNTY LOCAL RULE 180.

MSCs will be set for in-person appearances unless all Parties stipulate to a remote MSC and the court adopts the stipulation as an order of the court.

Evidentiary proceedings: These are proceedings at which live, oral testimony is expected, such as trials, small claims appeals, and judgment debtor hearings. Such proceedings will be **in-person** absent a prior court order. Parties seeking to have all, or any portion of, an evidentiary proceeding handled remotely must make that request in advance by an appropriate application.

B. Court Reporters: Department C23 does not provide the services of an official court reporter unless a party has obtained a fee waiver and timely made written request on the required form (see link at end of this paragraph for more information). If the Parties would like the

¹ As used in these policies and procedures, the terms "Party" and "Parties" refer to both represented and self-represented Parties to the litigation as well as counsel for represented Parties.

services of a certified court reporter, they can stipulate and bring their own reporter consistent with the Court's policy regarding "Privately Retained Court Reporters" (http://www.occourts.org/media/pdf/Privately_Retained_Court_Reporter_Policy.pdf). Such reporters must have the ability to provide "real time" reporting through software compatible with the applications utilized in the courtroom. For more information regarding court reporters, please visit <http://occourts.org/directory/cris/availability.html>.

- C. **Stipulations and Orders:** Stipulations and Order must be submitted as **ONE** document in **WORD** format to enable the court to make any modification to the order portion the court deems necessary. The stipulation portion must set forth, in detail, good cause for the requested order. The Parties' stipulation alone is often not sufficient good cause. Please ensure the signature line for the judge is not the only item on the page; there also must be at least two lines of text from the order portion. The Parties should carefully review any stipulation received back from the court for any additional orders the court may have made.
- D. **Case Management Conferences:** All Parties must be fully familiar with, and follow as applicable, California Rules of Court, rules 3.720 through 3.734, including, but not limited to, the timely filing and service of a Case Management Conference Statement. Failure to comply with these rules may result in sanctions.
- E. **Mandatory Settlement Conferences:** All Parties must be fully familiar with, and follow as applicable, Orange County Local Rule 316. Failure to do so may result in sanctions pursuant to Orange County Local Rule 381. The MSC statement required by rule 316 should be e-filed, and it will be "Received" and kept confidential. **Failure to submit MSC statements by all Parties also will result in the MSC being ordered off calendar with the trial date to remain.** Please include the email address for settlement counsel on the MSC statement.
- F. **Compliance with Rules:** All Parties must read and be familiar with Division 3 of the Orange County Local Rules and all applicable California Rules of Court. Sanctions may be imposed as authorized in those rules for any violations.
- G. **Cooperation, Civility, and Courtesy:** The court expects all Parties to fully cooperate with each other and to act at all times with civility and courtesy. The Orange County Bar Association Civility Guidelines are a preface to the Orange County Local Rules and all Parties should familiarize themselves with those Guidelines.

EX PARTE APPLICATIONS

- A. **Contents of Ex Parte Applications:** All ex parte applications must comply with California Rules of Court, rules 3.1200 through 3.1207, including, but not limited to, making an "affirmative factual showing in a declaration containing competent testimony based on

personal knowledge of irreparable harm, immediate danger, or any other statutory basis for granting relief ex parte.” (Cal. Rules Ct., rule 3.1202.) The papers also must demonstrate notice was properly given and state whether the application will be opposed.

Before applying ex parte to advance a motion hearing date, counsel should make sure to file the motion first. The court likely will deny any request to advance a motion that has not been filed.

Counsel’s diligence in pursuing the case is a major consideration on many ex parte applications. Counsel’s failure to exercise diligence—e.g., in conducting discovery, reserving and filing motions, or otherwise preparing the case for trial—is presumptively not an appropriate ground for ex parte relief.

- B. Filing, Delivery, and Fees for Ex Parte Applications:** All ex parte papers must be e-filed by 11:00 a.m. on the court day prior to the ex parte hearing, and a courtesy copy of the papers must be delivered to Department C23 by 11:30 a.m. the court day prior to the ex parte hearing. The fee required for each ex parte application must be paid in the Civil Clerk’s Office prior to presenting the documents in the courtroom.
- C. Opposition to Ex Parte Applications:** Any opposition to an ex parte application must be e-filed as earlier as possible. If the court conducts a hearing on an ex parte application, the court will entertain oral opposition, but, as explained below, the court does not conduct hearings on all ex parte applications.
- D. Ex Parte Application Hearings:** The court endeavors to conduct hearings on most ex parte applications, but the hearing on ex parte matters shall not interfere with or delay any trial in which the court is engaged. Counsel may have to wait. Moreover, although the court endeavors to conduct hearings on most ex parte applications, the court may decide an ex parte application on the papers and without a hearing when it deems appropriate. (Code Civ. Proc., § 166, subd. (a)(1).)

LAW AND MOTION MATTERS

- A. Reserving Hearing Dates:** Motion hearing dates must be reserved through the Court’s website at www.occourts.org. All motion papers must be filed within 24 hours of the reservation being made, except for summary judgment motions and sanctions motions subject to a “safe harbor” provision (see, e.g., Code of Civil Procedure section 128.7). Failure to timely file all motion papers after making a reservation will result in the reservation being revoked. Counsel should not wait until the last possible moment to reserve a hearing date and file a motion; the court limits the number of hearings on each law and motion day, and your preferred hearing date may not be available.

- B. Taking Motions Off Calendar:** If the Parties wish to take a motion off calendar, counsel for the moving party must contact the courtroom **as soon as possible** to avoid the court and staff working up a motion on which the Parties do not wish to proceed. Moreover, the court may decline to allow a motion to be taken off calendar if a tentative ruling has been posted.
- C. Tentative Rulings:** The court endeavors to post tentative rulings on the court's website (<https://www.occourts.org/sites/default/files/oc/default/tentative-rulings/dhesseltinerulings.pdf>) not later than 12:00 noon on the date of the hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.
- D. Submitting on Tentative Rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** Parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.
- E. Non-Appearances:** If no one appears for the hearing and the court has not been notified all Parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)
- F. Appearances:** As noted above, Department C23 conducts law and motion hearings remotely by Zoom videoconference. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All Parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All Parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media->

[relations/aci.html](https://www.occourts.org/media-relations/aci.html). The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

- G. Discovery Motions:** Reasonable, good faith, meet-and-confer efforts generally are required before filing any discovery motion. (See Code Civ. Proc., § 2016.040; *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1293 [Discovery Act requires moving party to declare it made a serious attempt to obtain an informal resolution of each issue; rule designed to encourage Parties to work out their differences informally to avoid necessity for formal order, which lessens burden on court and reduces unnecessary expenditure of resources by litigants]; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402 [central precept of Discovery Act is discovery should be self-executing; discovery intended to operate with a minimum of judicial intervention].)

Accordingly, the court strongly encourages the Parties to work out their differences informally. The moving and responding Parties are expected to engage in meaningful meet and confer conversations in person, telephonically, or over remote videoconference, not through email, prior to filing any discovery motion.

TRAIL PROCEDURES

- A. Orange County Local Rule 317 and Trial Notebook:** The court **STRICTLY ENFORCES** Orange County Local Rule 317, and any violations may result in sanctions under Orange County Local Rule 381. The requirements include conducting the issue conference at least 14 days before the trial date and addressing all issues identified in rule 317.

The Trial Notebook described in Orange County Local Rule 317 **MUST** be delivered to the courtroom by **12:00 noon on the Wednesday before the trial date**. Submission of the Trial Notebook does not eliminate the obligation to also e-file all contents of the Trial Notebook. The Trial Notebook is essentially a courtesy copy the court will use throughout the trial. The binder(s) containing the Trial Notebook must be no larger than 3 inches, and it is acceptable if more than one binder is used. Also, the court requests the motions in limine be placed in a binder(s) separate from the other contents of the Trial Notebook. The Parties must e-file a fully executed Statement of Compliance and a copy also should be included in the Trial Notebook. The Statement of Complaint form may be found on the Court's website at <https://www.occourts.org/system/files/civil/l81.pdf>.

- B. Exhibit List, Exhibits, and Demonstratives:** The Parties are to cooperate in preparing a joint exhibit list and joint exhibit notebooks. The joint exhibit list must be e-filed and included in both the court's Trial Notebook and each exhibit binder. Two additional copies of the joint

exhibit list should be included with the Trial Notebook as described in Orange County Local Rule 317.

The joint exhibit list must include a caption page identifying it, and the list should be in a table format that includes the following columns: (1) "Exhibit Number," (2) "Description," (3) "Stipulation," (4) "Date Identified," and (5) "Date Admitted." All exhibits must be identified by a separate number; do not use letters. The description of each exhibit should include each exhibit's date or state it is undated. The stipulation column should state whether the Parties stipulate to authenticity, foundation, admissibility, or none. The exhibit list should NOT identify any exhibit as a plaintiff or defendant exhibit.

The Parties must appear on the date of trial with two (2) complete sets of the exhibits for the court (in addition to the copies for the Parties). Each set of exhibits must be in three-ringer binders that are no larger than three inches. The outside cover of each binder must include a caption page identifying the binder as an exhibit binder, the volume number of the binder (e.g., Volume 3 of 7), and the specific exhibits included in the binder (e.g., Exhibit Nos. 27-45). The outer spine of the binder also must identify the volume number and the specific exhibits included in the binder. Every binder must include a copy of the exhibit list and every exhibit must be separated with a numbered tab that corresponds to the exhibit list. Moreover, each page of each exhibit must be separately numbered with each exhibit starting with number one. For example, if Exhibit 7 is a three-page exhibit, its pages should be numbered 7-1, 7-2, and 7-3, and the first page of Exhibit 8 would then be 8-1. One set of the exhibits is for the court, and one set is for the witness stand. The clerk does not need a separate set of exhibits. The first page of every exhibit in the witness copy should have a GREEN exhibit tag filled out and stapled to the top right corner. The form of the exhibit tag may be found on the court's website at <https://www.occourts.org/system/files/1529.pdf>. The witness set of exhibit binders will be the official set of exhibits.

In a two-party case, Plaintiff shall number its exhibits starting with 1; Defendant shall number its exhibits starting with 200. If these numbers are not sufficient to cover all exhibits, the Parties are to cooperate and agree to an appropriate number range for each party. If there are more than two Parties, the Parties are to cooperate in agreeing on a number range for each party. No two Parties are to use the same number, and duplicate exhibits are to be avoided.

Each exhibit should be moved into evidence as soon as admissibility has been established; **DO NOT** wait until the end of a witness's testimony or the end of a party's case to move exhibits into evidence. No exhibit shall be published to the jury prior to being admitted and without court approval.

If any Party plans to use enlargements of exhibits, such “blow ups” 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 are informally marked with, and referred to by, the same exhibit number during trial.

If any Party plans to use a video exhibit, Power Point, demonstrative, videotaped depositions or audio recording, the Court must be advised in advance. Court permission is required before such demonstratives or presentations may be used. It is each Party’s responsibility to supply the necessary equipment and to have it set up before trial or during a recess.

Video tape or audio tape evidence may not be introduced unless accompanied by a separately marked audio transcript and/or “still picture” representation of what the proponent seeks to present as evidence.

Exhibits may not be shown to the jury in opening statements unless Counsel have (i) stipulated in advance that the exhibit is admissible; and (ii) advised the court of their stipulation on the record before opening statements.

- C. Deposition Transcripts and Designations:** Prior to commencement of trial, counsel shall lodge all depositions to be used in trial with the clerk and advise the Court if there are any depositions which are unsigned.

A Party that expects to present one or more witnesses at trial by deposition shall, **no later than the Issue Conference**, provide opposing counsel with its written deposition designations. This shall be done by providing a hard copy of the deposition transcript with that Party’s designations highlighted. The other Party shall, on the same hard copy of the document, mark its counter-designations (by highlighting them in a different color) and also indicate, in the margin next to any testimony designated by the other side, any objections to the admissibility of the designated testimony. Once both sides have annotated the transcript with their designations, counter-designations, and objections to the other side’s designations, the transcript shall be submitted to the court **prior to commencement of trial**. At that time, the parties also shall e-file a joint notice in table format that identifies each designated portion of testimony by page and line number, and any objections to each designated portion of testimony.

Where the deposition testimony will be presented by videotape, the Parties shall promptly seek a ruling resolving objections and counter-designations so the videotape can be edited to remove objections and attorney argument.

- D. Witness Lists and Witnesses:** As part of the Trial Notebook, the Parties are required to submit a joint witness list. As stated in Orange County Local Rule 317, two additional copies

must be submitted along with the copy included in the Trial Notebook. The joint witness list must list all witnesses the Parties anticipate calling other than strictly impeachment or rebuttal witnesses.

The joint witness list must include a caption page identifying it, and the list should be in a table format that includes the following columns: (1) a number for each witness, (2) “Witness,” (3) “Title and/or Role in Case,” (4) “Direct Examination Time Estimate,” (5) “Cross Examination Time Estimate,” and (6) “Total Time Estimate.” Each time estimate column should include a total time estimate at the bottom so the list provides a total of all direct examination time estimates, a total of all cross-examination time estimates, and a total of all time estimates.

It is the responsibility of all Parties to arrange the appearance of all witnesses to avoid delay, to confer and cooperate with one another during trial regarding when witnesses will be needed and are expected to testify, and to advise the court at the earliest opportunity of any anticipated problems with the presence of witnesses (e.g., unavailability or any request to testify out of order). The court expects the Parties to have their witnesses “stacked” so each witness is available immediately following the conclusion of the prior witness’ testimony. No delays will be entertained for unavailable witnesses.

The court requires counsel to provide opposing counsel 48-hour notice of when each witness is expected to testify. Moreover, the court requires counsel to notify the court at the end of each day which witnesses will be testifying the next trial day and ensure there are sufficient witnesses available to fill the day.

The Parties shall advise their witnesses of the appropriate manner of testifying and the impact of the court’s rulings, if any, on the witnesses’ testimony.

- E. Jury Instructions:** As part of the Trial Notebook, the Parties must submit a copy of all proposed jury instructions. The jury instructions must start with three indexes in table format that includes the following columns: (1) “Instruction”—this column should identify each instruction by CACI number and title (e.g., CACI 100 – Preliminary Admonition) or, for a special instruction, by the party proposing it, the number of the special instruction proposed by that party, and a brief description (e.g., Plaintiff’s Special Instruction No. 1 – Negligence), (2) “Given as Proposed,” (3) “Given as Modified,” (4) “Withdrawn,” and (5) “Refused.” The first index shall be entitled Agreed Upon Jury Instructions, the second index shall be entitled Plaintiff’s Requested Jury Instructions, and the third index shall be entitled Defendant’s Requested Jury Instructions.

The proposed jury instructions shall be grouped into three groups that coincide with the three indexes, and each group should be separated by a piece of colored paper or a tab. In

other words, the first group should be all the jury instructions upon which the Parties agree, the second group should be all the jury instructions the plaintiff proposes but to which the defendant objects, and the third group should be all the jury instructions the defendant proposes but to which the plaintiff objects.

Each proposed jury instruction must appear on a separate page and shall NOT include a disposition table. The disposition will be tracked on the indexes described above. Each CACI instruction should include the CACI number and title, and shall appear exactly as the Parties propose they be read to the jury, with no blanks and all brackets removed. For special instructions, they should be numbered as to the party proposing them and titled as described above in connection with the index. The authority supporting the propriety of the special instruction and a short explanation of why the special instruction is necessary or appropriate must appear on a separate page attached to the instruction that bears the same number and title as the instruction itself.

CACI instructions “are the official instructions for use in the state of California.” (Cal. Rules of Court, rule 2.1050(a).) “Language in an appellate court opinion which may be a good statement of law . . . does not necessarily make a good jury instruction.” (*People v. Adams* (1987) 196 Cal.App.3d 201, 204-205.) In the court’s experience, the CACI instructions prepared by the Judicial Council of California are typically sufficient, if not excellent and appropriate.

- F. **Verdict Form:** As part of the Trial Notebook, the Parties must submit a copy of the proposed verdict form. As part of the Orange County Local Rule 317 Issue Conference, the Parties shall endeavor to agree upon the verdict form. If they are unable to agree, then the Trial Notebook must include a copy of the verdict form proposed by the plaintiff and a copy of the form proposed by the defendant. Other than identifying which party proposed the form, each verdict form should be in a format appropriate for submission to the jury.
- G. **Stipulations:** All stipulations must be discussed and agreed upon by all Parties before being called to the jury’s attention. A Party must not offer to stipulate to any matter within the jury’s hearing. Any stipulation to be read or submitted to the jury must be reduced to writing and e-filed with the court to make it part of the court file. As part of the Orange County Local Rule 317 Issue Conference, the Parties are expected to have attempted to reach stipulations regarding the authenticity, foundation, and admissibility of each exhibit, and those agreements should be reflected on the joint exhibit list.
- H. **Procedural Stipulations:** Counsel must review the proposed procedural stipulations attached hereto and discuss them during the Orange County Local Rule 317 Issue Conference. The court will inquiry of counsel during the pretrial conference regarding the

stipulations to which they are willing to agree, and the form will be filled out, signed, and filed with the court.

- I. In Limine Motions:** The Parties must meet and confer in a good faith effort to resolve any issue before filing a motion in limine to seek the court’s intervention. Counsel should avoid broad, general motions, such as to exclude “all hearsay evidence” or “all cumulative evidence” or “evidence not disclosed in discovery.” Such motions are not likely to be granted. (See *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) Motions in limine usually are intended to exclude specific items of evidence, not broad categories. Be specific and concrete in what you want to exclude. If you cannot specifically identify the evidence to be excluded, neither can the court in an enforceable order. Also, “[m]atters of day-to-day trial logistics and common professional courtesy” are not proper subjects of in limine motions. (*Id.* at p.671.)

Counsel should not use in limine motions as substitutes for summary adjudication motions, motions for judgment on the pleadings, or other dispositive motions. (See, e.g., *Johnson v. Chiu* (2011) 199 Cal.App.4th 775, 777; *Amtower v. Photon Dynamics* (2008) 158 Cal.App.4th 1582, 1588; *R&B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 333.)

- J. Jury Selection:** The court uses a “seven pack” method in which 21 prospective jurors are initially questioned. The court will review all procedures and expectations regarding jury selection with counsel during the pretrial conference.
- K. Multiple Counsel:** Absent permission from the court, only one attorney for a party may perform any one of the following functions—select a jury, deliver an opening statement, deliver a closing argument, examine any particular witness, cross examine any particular witness, or argue an issue. Upon request of a party, the court may, in its discretion, allow more than one attorney per party to perform one or more of these trial functions.

Attachments: Procedural Stipulations