



# Superior Court of California County of Orange

## Civil Mandatory Settlement Conference Remote Procedure Effective August 1, 2020

The Civil Panel provides the following procedure for conducting remote Mandatory Settlement Conferences (MSC) in unlimited civil cases.

### A. Scope

1. Any currently pending case with a scheduled MSC.

### B. MSC Procedure

1. Approximately two weeks in advance of the scheduled MSC, the clerk assigned to the courtroom in which the MSC(s) is scheduled (“Clerk”) shall request the Temporary Judge Program Coordinator (“Coordinator”) to assign one or more Temporary Judges to handle the MSC calendar. The Coordinator will assign one or more Temporary Judges to the department to conduct the MSCs and will inform the Clerk of the identity and contact information of the Temporary Judges so assigned. The Coordinator should ensure, where possible, that enough Temporary Judges are assigned to any particular courtroom to ensure that the Temporary Judge will not have to preside over more than two MSCs on any one day.

The Clerk will provide the Temporary Judge with the case, counsel/self-represented parties’ contact information. Assuming no disqualification occurs pursuant to paragraphs 2, the Temporary Judge will contact counsel/self-represented parties to confirm a time for the MSC on the scheduled date.

2. If the Temporary Judge determines that she/he is disqualified (Code Civ. Proc., § 170.1, subd. (a)), the Temporary Judge shall promptly notify the Clerk. At the request of the Clerk, the Coordinator shall then assign another Temporary Judge to conduct the MSC and shall inform the Clerk of the identity and contact information for that Temporary Judge. (Note: If another Temporary Judge cannot be assigned, the court may reschedule the MSC to a date soon thereafter with notice to all counsel and self-represented parties.) The Clerk will provide the newly assigned Temporary Judge with the contact information for the parties. The newly assigned Temporary Judge will then

contact counsel/self-represented parties to confirm a time for the MSC on the scheduled date.

3. Counsel/self-represented parties shall file the required Settlement Conference Statement with the court pursuant to Local Rule 316 (B) using Orange County Superior Court Form L-0052. The Clerk shall provide the Settlement Conference Statements to the Temporary Judge by attaching them to an email containing the “Confidentiality Notice” set forth in paragraph F below. At the start of the remote MSC, the Temporary Judge shall confirm receipt of the Settlement Conference Statements to the parties. The Temporary Judge may request from counsel/self-represented parties copies of any other documents filed with the court that he or she considers necessary to the conduct of the MSC.
4. The MSC will be conducted remotely on a secure platform selected by the Temporary Judge. The Temporary Judge will provide counsel/ self-represented parties with the login information and other information necessary to conduct the remote MSC. The Temporary Judge will also instruct counsel/self-represented parties to contact the courtroom regarding any questions relating to the Temporary Judge assignment.
5. The MSC will be conducted pursuant to California Rules of Court, rule 3.1380 and Local Rule 316.

### **C. Conducting the MSC**

1. The participants shall ensure they can participate without distraction for the scheduled duration of the MSC. During the MSC, all participants must have access to email and must be able to send signed documents (either by way of an electronic signature, or by fax or via an email attaching a photograph of a signature).
2. All participants must keep the MSCs *confidential* and agree *not to record* any portion of it. (Cal. Rules of Court, rule 1.150.) Conduct or statements during the MSCs may be inadmissible to prove liability. (Evid. Code, § 1152.)
3. All participants must maintain safe social distancing consistent with all orders and recommendations of state and local government. No participants shall have physical contact with, pass documents to, share equipment with, or come within 6 feet of any other participant, unless they are already residing in the

same household. *The court will not condone or facilitate any conduct that increases the risk of spreading COVID-19.*

4. The Temporary Judge will preside over the MSC, ensure all participants can hear/see each other and confirm no one else is listening to or watching the MSC. The Temporary Judge has discretion over how to conduct the conference, including (with the parties' stipulation) the use of "breakout rooms" or separate sessions as needed. (See Cal. Code Jud. Ethics, canon 3B(7)(c) and 3B(12).)
5. The Temporary Judge shall email the Clerk if a required participant fails to appear and another participant requests monetary sanctions. (See Cal. Rules of Court, rules 2.30, 3.1380(b); Local Rules 316 (D), (E) & 381.) The Clerk will inform the Court, who will exercise its discretion as to whether to set an OSC re sanctions. If the Court sets an OSC, the Clerk will issue a minute order summarizing the Temporary Judge's email and setting a hearing.

#### **D. Settlement.**

1. If the parties reach a settlement, the Temporary Judge will direct the Plaintiff to file a Notice of Settlement (Judicial Council Form CM-200) with the assigned department within 7 calendar days of the settlement.
2. All required signatures must be exchanged in counterpart by electronic signature, fax or email. Because no court reporter will be present, the settlement agreement must contain detailed representations that the parties understand and consent to the agreement, that they do so of their own free will, that no threats or undisclosed promises have been made to secure their agreement, and that their questions about the agreement, if any, have been satisfactorily answered.
3. Upon conclusion of the MSC, the Temporary Judge shall notify the Clerk by email as to the outcome of the MSC, no later than the end of the day the MSC is scheduled. The notification will include the title and number of the case, the participants at the MSC, and whether the case settled or did not settle. Based on this email, the Clerk will prepare a minute order that describes the information provided by the Temporary Judge and serve this minute order on all counsel/self-represented parties.

4. If the required participants (Cal. Rules of Court, rule 3.1380(b); Local Rule 316 (D)) determine that an additional remote MSC session would facilitate settlement, the Temporary Judge shall schedule another remote MSC session with the required participants. The required participants (Cal. Rules of Court, rule 3.1380(b); Local Rule 316(D)) shall prepare a stipulation that they agree to appear at an additional remote MSC session. This stipulation shall include the date and time of the additional MSC session. The Temporary Judge shall direct the plaintiff to file the stipulation with the assigned department within 7 calendar days of the stipulation. The Temporary Judge shall notify the Clerk that the parties have scheduled an additional remote MSC, including the title and number of the case and the date and time of the additional remote MSC. The Clerk will prepare a minute order that describes the information provided by the Temporary Judge and serve this minute order to all counsel/self-represented parties.

#### **E. California Code of Judicial Ethics**

1. Nothing in this procedure shall be construed as limiting a judicial officer's discretion to participate in settlement conferences as described in California Code of Judicial Ethics, Canon 3B(12). Nothing in this procedure shall be construed as limiting a judicial officer's discretion as to whether to set a MSC.
2. Except for the parties' respective Settlement Conference Statements, which under Local Rule 316B, must be provided to the Clerk and the Temporary Judge *ex parte* so as to preserve their confidentiality, any communications (electronic or otherwise) between the Temporary Judge on one side and any MSC participant on the other must be copied to all parties to avoid *ex parte* communications. In the unlikely event the judicial officer or Temporary Judge must "initiate, permit, or consider" scheduling, administrative, or emergency *ex parte* communications, the judicial officer or temporary judge must comply with California Code of Judicial Ethics, Canon 3B(7)(b).

**F. CONFIDENTIALITY NOTICE:** This communication contains a confidential court document which must be kept confidential by law. This communication is for use solely by the intended recipient(s). Unauthorized interception, review, use, distribution or disclosure is strictly prohibited and may violate applicable laws, including the Electronic Communications Privacy Act. If you are not the intended recipient of this email, please contact the sender and destroy all copies of this message.