



Case Management Conferences in the Los Angeles Superior Court's unlimited jurisdiction independent calendar courts

HOW TO MAKE THE CMC MORE EFFECTIVE FOR YOU, YOUR CLIENT AND THE COURT

The initial case management conference is an important event in the life of an unlimited jurisdiction civil action. The judge assigned to your case is *required* to prepare a case management plan for each case, in order to manage the case until its disposition. The following background information is offered to help attorneys navigate the case management process effectively.

Reason for Case Management Conferences

The Trial Court Delay Reduction Act created Case Management Conferences (Gov. Code, §§ 68600-68620; hereinafter the "Act"). The Act requires judges with unlimited civil jurisdiction dockets to "actively manage" each case. The Act also requires the Judicial Council of California to enact delay reduction rules, found at California Rules of Court ("CRC") Rule 3.700 et seq.

Specifically, a judge must "compel attorneys and litigants to prepare and resolve all litigation without delay, from the filing of the first document invoking court jurisdiction to final disposition of the action." (Gov. Code, § 68607; CRC 3.713(c).)

These rules articulate the State's goal, of resolving all general jurisdiction civil cases within two years of filing. (CRC 3.713(b).) Pursuant to the CRC, judges must manage unlimited jurisdiction civil cases such that 75% thereof should be disposed of within 12 months, 85% within 18 months, and 100% within 24 months. (CRC 3.714(b)(1).)

The Act also authorized each Superior Court to adopt its own local procedures, standards, and policies for delay reduction. This includes creating time standards for the "conclusion of all critical steps in the litigation process, including discovery." (Gov. Code, § 68612.)

The Los Angeles Superior Court's Local Rules on Case Management and Disposition are found starting at Rule 3.22. Since May 2013, all actions filed in the Personal Injury hub, and limited civil cases, were exempted from the CRC's delay reduction rules. (Local Rule 3.23.) Local Rule 3.24(b) lists other types of cases that are exempt from subject to case management conferences and review. CRC 3.721 exempts complex cases and certain other cases from the case management rules.

Therefore, the following does not apply to personal injury actions filed in the Los Angeles Superior Court's Personal Injury Hub courts, complex cases, limited civil actions, and cases coordinated by the petition for coordination. (Local Rule 3.23, 3.24(b); California Rules of Court ["CRC"], Rule 3.721.)

The following rules apply to unlimited jurisdiction civil actions assigned to an **independent calendar ("I/C")** court of the Los Angeles Superior Court.

Attorneys and self-represented litigants are required to be aware of a court's delay reduction rules. (See, e.g., *Beverly Union Co. v. Superior Court* (1988) 206 Cal.App.3d 40, 43; *Lawrence v. Superior Court* (1988) 206 Cal.App.3d 611, 619 n. 4.)

Case Management Conferences in I/C courts

When the plaintiff files the complaint with the unlimited (general) jurisdiction civil courts in the Los Angeles Superior Court, the clerk will assign the action to a direct calendar (also referred to as an I/C) judge. (Local Rule 3.3(c).) Shortly thereafter, the judge will schedule a Case Management Conference ("CMC"). The CMC assists I/C judges in carrying out their mandate to actively monitor, supervise, and control the movement of all cases governed by the Act, from commencement through

resolution. (Gov. Code, § 68607(a).) The information that the parties provide to the court at the initial CMC will help the court determine the appropriate time disposition goal for that particular case. (Local Rule 3.24(c).)

Shortly after receipt of the court file, the clerk of the assigned I/C department will serve plaintiff's counsel with a "Notice of Case Management Conference" form (LA CIV 132). The initial CMC cannot be held any later than 180 days after filing of the complaint. (Local Rule 3.25(a)(1).) Many I/C courts, however, schedule the initial CMC earlier in the case. Plaintiff's counsel must provide notice of the CMC to all other parties. (Local Rule 3.3(c).) The Notice references the Act, and indicates that the issues to be discussed at the CMC are found at CRC 3.720-3.730.

The Notice also states that if a party does not file the required Case Management Statement, or fails to appear and effectively participate at the CMC, the court may impose sanctions, pursuant to Local Rule 3.37; Code of Civil Procedure §§ 177.5, 575.2, 583.150, 583.410; Government Code § 68608(b); and California Rules of Court, rule 2.2 et seq. That means a failure to submit a case management statement, or failure to appear at the CMC, may ultimately result in monetary sanctions or dismissal of the case.

A court may also schedule an Order to Show Cause re: why sanctions should not be imposed for failure to file a proof of service. This Order to Show Cause utilizes the Superior Court's form LACIV 166, and also provides notice that sanctions may be imposed for failure to comply. Many Central I/C courts schedule the OSC for the same date and time as the CMC. Plaintiff is to file the proof of service five days before the hearing.

See Feffer, Next Page

Tips for counsel's effective preparation for the Case Management Conference

First, parties are required to meet and confer in person or by telephone no later than 30 days before the date set for the CMC. (CRC 3.724; Local Rule 3.25(b).) The specific issues that counsel need to discuss at this meet and confer are listed in CRC 3.724 and 3.727. The following is a brief checklist of some of the issues you need to discuss with opposing counsel:

Discovery: Counsel should try to resolve any discovery disputes, and set a discovery schedule.

Discovery of electronically stored information: Are there any "e-discovery" issues, particularly regarding preservation thereof? Can counsel agree upon the form or forms in which such information will be produced? What is the scope of discovery of, and timeline for production of, such information? How will counsel assert and preserve claims of privilege, confidentiality, trade secrets, or proprietary status of the information? Are there any non-parties involved in such information? How will cost of production be allocated?

Anticipated motions: What are they? Can those issues be resolved informally?

Uncontested facts and issues: Can counsel enter into a written stipulation?

Disputed facts and issues: Counsel should discuss and identify them. Can any issues in the case be narrowed? Are there causes of action or affirmative defenses that can be eliminated, by motion or otherwise?

Settlement: Is it possible?

Trial availability: Counsel should discuss dates on which they and the parties are available or not for trial. The CRC requires counsel to discuss the reasons for unavailability.

Other Issues: The CRC direct counsel to discuss any other "relevant matters" related to the case (CRC 3.724(9)).

Next, counsel must prepare a case management statement on the required Judicial Council form (CM-110), and file

and serve it no later than 15 days before the scheduled CMC date. This case management statement may be filed jointly. It is important that you fully complete this case management statement, because it contains information that your judge needs to know, to determine the appropriate case disposition time goal for your case. Completing the form may also prompt you to verify that other required tasks have been completed.

The Case Management Statement contains 20 questions. All questions are important, but some of the 20 are highlighted on this checklist, because these questions should prompt the answering party to determine whether the required tasks need to be done, or because the information is essential for the court's proper evaluation of your case. The following questions merit further discussion:

Question 3, service: With certain exceptions, the plaintiff is required to serve the complaint on all named defendants and file proofs of service within 60 days after the filing of the complaint. (Gov. Code, § 68616(a); CRC 3.110(b).) Therefore, by the time of the initial CMC, if all parties have not been served, plaintiff will need to identify which defendants have not been served, and the reason service has not been effectuated. Cross-complainants are also directed to answer question 3.

If you have served some or all of the named defendants, you should verify that the proofs of service have been filed with the court prior to the CMC.

Question 5, jury or nonjury trial: This question should not be left blank! Also, it is a good practice to confirm that, if your client demands a jury trial, that you have posted jury fees. This is because, with certain statutory exceptions, jury fees are required to be posted by the initial CMC. If the fees are not posted, the party who fails to post jury fees waives trial by jury. (Code Civ. Proc., § 631, subs. (b), (f)(5).)

Question 6, trial date: If your case will not be ready to try within 12 months of the filing of the complaint, provide the reason in your answer to 6(b). You should specify your or your client's unavailability for trial, and the reasons for unavailability (e.g., other trials, vacation, etc.) in response to 6(c).

Question 7, length of trial: Provide your good-faith estimate. Your judge will compare your time estimate to that of opposing counsel, and note if there are any considerable differences.

Question 9, statutory preference: If you believe that your client's health justifies preferential trial setting pursuant to Code of Civil Procedure section 36, subdivision (a), this should be disclosed on the case management statement. If you have already filed the petition for preferential trial setting, the case management statement should so reflect.

Question 10, alternative dispute resolution: CRC 3.221 requires plaintiff's counsel to serve a copy of the ADR information package on each defendant together with the complaint. The case management statement asks whether you have provided that ADR package to your client, and reviewed the ADR options with your client. If you have not already done so, completing the case management statement should prompt you to do this. You then identify your client's position on the various forms of ADR in response to 10(b) and (c).

Question 11, insurance: Are there insurance issues that need to be disclosed to the court?

Question 12, jurisdiction: This is where you disclose a bankruptcy proceeding or any other matter that may affect the court's jurisdiction or processing. If, for example, you have heard that one or more of the defendants may have filed a bankruptcy case, question 12 may prompt you to check the bankruptcy court filings to verify whether a petition has been filed. Or, there may be a pending criminal action that may affect the processing of your civil case.

Question 13, related cases: Are there any? If you believe there may be other related cases or proceedings, you should not only provide the information in response to question 13, but also verify that you have filed a Notice of Related Case (CRC 3.300(b)) prior to the CMC.

Question 14, bifurcation: This question is not just limited to motions to bifurcate liability and damages. Are there causes of

See Feffer, Next Page

action or other legal issues that require adjudication through a bench trial first, before the jury phase begins?

Question 15, other motions: Are there other motions that you expect to file before trial? If so, do they have any impact upon trial readiness? Did opposing counsel disclose in the meet and confer that a petition to compel arbitration will be filed? Has a lawyer for an out-of-state defendant told you that a motion challenging the court's jurisdiction will be filed? It is important that any anticipated summary judgment or summary adjudication motions be disclosed in response to this question.

Question 16, discovery: If discovery has not been completed, advise the court of your anticipated completion date of written discovery, depositions, and any other discovery yet to do. Also, if your pre-CMC meet and confer with opposing counsel has yielded any issues regarding discovery of electronically stored information, identify those issues in response to 16(c). If your discovery plan includes seeking personnel files of law enforcement officers, this is where you tell the court that you anticipate bringing a *Pitress* motion.

Question 18, other issues: Is there anything else relevant that the judge needs to know for the judge to create an effective management plan for your case?

Question 19, meet and confer: This is where you disclose any noteworthy issues arising out of your pre-CMC meet and confer with opposing counsel.

What to expect at the Case Management Conference

CRC 3.729 provides a checklist of 25 factors for judges to consider in deciding whether to schedule a trial date at the initial CMC, or at a later date. Counsel should expect the judge to ask questions at the CMC, to elicit information regarding effective judicial management of the case, including trial setting. Local rule 3.25 requires counsel to appear at the CMC "fully prepared" to discuss the 20 issues identified in CRC 3.727. Counsel should review the entirety of the issues listed in the CRC, and be prepared to

discuss them. The following are some of the issues identified in the CRC:

- Are there any related cases? If so, has a notice of related case been filed?
- Status of service

If all defendants have not been served, plaintiff's counsel should be prepared to discuss why that has not occurred, and the plan for service. Has counsel verified a corporate defendant's status with the California Secretary of State? Will counsel need to submit an application for service by publication? If so, when will that be done? Are additional parties anticipated, or may Doe defendants be dismissed at that time? Are cross-complaints anticipated? Would that bring in additional parties? Are there parties who have been served but have not yet appeared? If the time to file a request for entry of default has passed, and plaintiff has not done so, why not? The judge may make orders for completion of service by a particular date.

The plaintiff is required to file a request for entry of default within 10 days after the time for service has elapsed. (CRC 3.110(g).) Therefore, if the time for service has passed, and plaintiff has not filed the request for entry of default, the judge may issue sanctions for the failure to comply with this rule, or order a completion date for this to occur.

Are additional parties anticipated, or is amendment to the pleadings anticipated?

Plaintiff's counsel should be prepared to dismiss the Doe defendants, or ask the court for additional time for that to occur.

- Are there other matters, such as a bankruptcy, that may affect the court's jurisdiction or processing of the case?

Is there a current or imminent bankruptcy? Is there a class action pending in the complex courts that may involve this plaintiff? Is there a pending administrative or criminal action relating to the facts of the action? Is there a reason why the case cannot be tried within 12 months of the filing of the complaint?

Willingness to participate in alternative dispute resolution

If a case management statement reflects that a party is not willing to participate in ADR, the court may nonetheless order the parties to participate in a mandatory settlement conference. Be prepared to discuss these issues at the CMC.

Has a mediation been scheduled? If the parties are willing to participate in mediation, when in the case do the parties plan to do that? Closer to trial?

- Status of discovery

Counsel should also be prepared to discuss the status of discovery, including whether there are any current or anticipated disputes, what discovery is left to do, and when discovery should be completed. Clearly some cases are more document-intensive than others, involve numerous depositions in foreign jurisdictions, or have other factors that make the discovery process longer or more complicated than normal. If you anticipate that the discovery process will pose challenges to having your trial a year after the filing of the complaint, the CMC is your opportunity to tell the court. Your judge will consider the amount of discovery that remains to be conducted. (CRC 3.729(14).) Your judge may give you a trial date that accommodates your anticipated discovery completion, and, if there is a considerable amount of discovery to complete, may also schedule an additional case management conference, to monitor the progress of discovery.

- Trial-setting

Is the case entitled to statutory priority? Are there legal issues to bifurcate? Should there be severed trials on the complaint and the cross-complaint?

The judge will also pay particular attention to any disclosed reason why the case cannot be tried within 12 months of the filing of the complaint. (Item 6(b).)

On occasion, the parties' time estimates for the duration of trial are dramatically different. If one side asks for a two-day court trial, and the other side asks for a 15-day jury trial, counsel should anticipate the court asking the parties to explain why each time estimate was given.

It is important that, even if you, as trial counsel, do not believe the judge should be scheduling a trial date at the initial CMC, you should nonetheless be prepared for that to occur. It is important to have trial counsel's schedule available to the judge, including unavailable dates for the year past the CMC.

Again, the party demanding trial by jury must post the appropriate jury fees prior to the CMC. If your client demands a jury, but you have not yet posted the required fees, you should disclose this information to the judge, who has the discretion to grant a continuance and order a new deadline for posting the jury fees.

- The nature of injuries; the amount of damages, including any special or punitive damages; and any additional relief sought.

- Other information important to the case

This is your opportunity to advise the judge of any other significant issues. With the vast majority of cases pending in the I/C courts, extensive judicial management is not needed; most cases can be given an FSC/trial date at the initial CMC, with perhaps one other pre-trial event (such as a post-mediation status conference) being scheduled. There are, however, many cases where effective judicial management of the case justifies the court scheduling a further CMC. (CRC 3.723.)

At the conclusion of the CMC, after considering the unique facts and anticipated proceedings of each case, the judge will enter a case management order. (CRC 3.728.)

Conclusion

Litigators who actively prepare for and participate in the CMC process will benefit all. Your judge will rely on the information provided by counsel during the CMC to tailor a case management plan that best suits the needs of your case, with the goal of resolving your case without delay.

Judge Elizabeth R. Feffer presides over a civil independent (direct) calendar courtroom at the Stanley Mosk Courthouse in downtown Los Angeles. Since 2010, Judge Feffer has been a panelist for the California State Bar's annual "Coaching for the New Practitioner" program, sponsored by the State Bar's Litigation Section, for new admittees. Judge Feffer was appointed to the bench in 2007. ☐