
Complex Civil Guidelines

GUIDELINES AND PROTOCOLS

COMPLEX CIVIL LITIGATION DEPARTMENT

Welcome to the Complex Civil Litigation Department of the Superior Court of California, County of Santa Clara. This is one of seven courts selected by the California Judicial Council where case management principles designed to reduce the time and expense normally associated with complex civil litigation cases are being employed.

Counsel's familiarity with the applicable *California Rules of Court, Local Rules – Superior Court of California, County of Santa Clara* and the *Deskbook on the Management of Complex Civil Litigation* is expected. A copy of the *Deskbook* may be obtained by contacting LEXIS PUBLISHING at 1-800-833-9844.

In addition, familiarity with the following guidelines and protocols will answer common procedural questions and should assist you in your appearances in this Department. ***Note: These Guidelines and Protocols are revised from previous versions. Your thoughts and suggestions are always welcome. Significant practice highlights include:***

This Department's website is now integrated into the Court's site, www.scscourt.org

The Court will normally issue tentative rulings on motions of all types and unless an objection is properly raised, the ruling will automatically become the Court's order the next day

Ex parte hearings are limited to two mornings per week and require advance reservation with the Coordinator

Letter briefs are not acceptable

Subsequent conference statements are to be in a combined format; see VII. 5.

No discovery motions until the parties have meaningfully met and conferred AND met with the Court for a face-to-face conference

The Court requires detailed JOINT pre-trial statements in advance of a pre-trial conference where counsel are expected to make concrete suggestions as to efficient trial management

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**PLAINTIFF MUST SERVE A COPY OF THESE GUIDELINES
WITH THE SUMMONS AND COMPLAINT.**

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I. CONTACT INFORMATION

Department 1C – Downtown Superior Courthouse, 191 N 1st Street, Second Floor,
San Jose, CA 95113.

www.scscourt.org

Judge	Hon. James P. Kleinberg	408-882-2110
Courtroom Clerk	Paula Bastian	408-882-2113
Reporter	Joanne Martin	408-882-2115
Bailiff and Deputy Sheriff	Cesar Avalos	408-882-2111

Coordinator for Complex	Rowena Walker	408-882-2286
E-Filing Fax:	408-882-2293	
E-Filing Web Site:	http://www.scefiling.org	

II. INTRODUCTION

Complex cases suitable for assignment to the Complex Civil Litigation Department are defined in Rule 3.400, California Rules of Court (“Rules” or CRC). Cases will be assigned to the Complex Civil Litigation Department by the Court’s own motion, or on application of any of the parties, pursuant to the procedures specified in Rules 3.401-3.403 and Santa Clara County Local Civil Rule of Court 1(B). Applications for complexity determination shall be heard in the Complex Civil Litigation Department. It is within the Court’s discretion to accept or reject a case for complex designation.

In general, cases assigned to the Complex Civil Litigation Department will be managed in accordance with the principles set forth in the Deskbook on the Management of Complex Civil Litigation (“Deskbook”).

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III. COURTROOM DEMEANOR, CONDUCT AND ETIQUETTE

1. The Court expects civility and proper decorum at all times. Witnesses and parties are to be addressed and referred to by their surnames. **COURTESY TOWARDS EVERYONE IN THE COURTROOM IS REQUIRED.** Advise all witnesses and parties to observe appropriate courtroom demeanor and punctuality. The civil and courteous treatment of courtroom staff and opposing counsel is a paramount professional obligation of counsel.
2. All pagers, cell phones and other audible electronic devices must be **TURNE**D OFF while in the courtroom whether or not court is in session.
3. Do not approach the clerk or reporter while court is session for any reason, or address the reporter with any request without permission of the Court.
4. Objections, statements and arguments must be addressed to the Court rather than opposing counsel. Counsel may speak from the lectern (if present) or the counsel table. Counsel must stand when objecting or addressing the Court. Counsel may approach any witnesses as necessary only with leave of Court.
5. At the end of each day, counsel must clear work areas including the area in the rear of the courtroom.
6. Use of the department's fax machine or telephone requires the Court's permission.
7. It is counsel's responsibility to note the date and time set for any future hearing. Hearing dates are set by contacting the Coordinator.
8. Copy work is done by staff in the Records Unit. Courtroom staff will not make copies at counsel's request unless directed to do so by the Court. Copy work completed by courtroom staff is subject to the current per-page copy fee.
9. If a peremptory challenge or challenge for cause is upheld, the case will be referred to the Civil Supervising Judge for reassignment.

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IV. GENERAL MATTERS

1. The Court expects all counsel to maintain regular communication with each other regarding hearing dates, progress of the case, and settlement possibilities. A condition of remaining in the complex department is that counsel will behave toward all counsel and other participants with civility, courtesy and professionalism, both in and out of Court.
2. The Court believes in open discovery in accordance with the law, but expects counsel to refrain from engaging in excessive and abusive discovery. *See discussion of discovery below*
3. The Court will require written notice of all hearing dates and decisions. Notice will not normally be “waived.”
4. Continuances of hearing or trial dates are discouraged but may be necessary from time to time. Continuances of trial dates by stipulation are not permitted without prior approval of the Court, and only to a date pre-approved by the Court. Please call the Coordinator for available dates before contacting other counsel. If preliminary approval is given, a written stipulation must be provided before the hearing or trial date. Faxed signatures on stipulations are permitted.
5. In the event a case settles prior to a court hearing or trial date, parties must file with the Complex Litigation Department either a Notice of Settlement, Request for Dismissal, a Stipulation for Entry of Judgment or a Judgment on Stipulation that is ready for the Court’s signature, and must telephonically notify the Court as soon as the disposition is agreed upon. If the applicable document is not ready, counsel must appear at the time scheduled for hearing and recite the settlement for the record.
6. Cross-complainants must serve a copy of these guidelines upon any new parties and give notice of any scheduled hearings and depositions at the time the cross-complaint is served.
7. All actions classified as complex or provisionally complex are subject to the Court’s Electronic Filing and Service Standing Order, unless exempted by order of the Court for good cause. Further information is posted on the Court’s website at www.scefiling.org.

V. EX PARTE APPLICATIONS

1. Ex parte appearances are discouraged except in unusual situations. The Court will only hear ex parte matters on Tuesday and Wednesday mornings from 8:15 to 9:00 A.M. provided a time slot is reserved through the Coordinator. Strict compliance with Rule 3.1200-3.1207 of the California

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Rules of Court is required. The ex parte application and all supporting papers, including any proposed pleading, motion or order shall be electronically submitted to the Court's website by noon the Court day prior to the scheduled ex parte hearing date.

2. The Court is eager to assist counsel when specific problems arise that may not require a formal motion. To arrange a conference with the Court when all counsel agree to the advisability of such a discussion, please contact the Coordinator to reserve a time for the conference. In these instances "letter briefs" are not acceptable, but briefs on court paper not exceeding 3 pages are. Normally, briefs from each side describing the issues should be faxed or emailed to the Court in advance of the conference.

3. Counsel may appear by telephone, with the Court's prior permission, at counsel's expense.

VI. LAW AND MOTION

Briefs and Oral Argument – General Admonitions

Memoranda of points and authorities should be tightly organized and written. The Court is not interested in history except as it pertains to the motion at hand. Adverbs and adjectives are usually not helpful. Invective is useless. When you think you have edited the brief sufficiently, go over it and edit it again. Use spell check. Avoid string cites and footnotes. Out-of-state authority should be used only when necessary. Never omit a point thinking you'll "save it for argument." Organization and candor are essentials. A mere recitation of general black-letter law is of no value.

A retired judge of this Court used to ask counsel at the start of the law and motion calendar, "Are you proud of your briefs?" Since the papers are reviewed by the Court it is not useful to repeat your written arguments. If there are new points you wish to argue, be prepared to explain why they were not included in your papers. This is not only for the sake of efficiency but to comply with due process and provide the other side a fair opportunity to respond. On occasion the Court will invite oral argument; typically this is for the Court to ask questions of counsel. Bring extra copies of essential papers to the hearing.

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1. Law and Motion matters are generally heard Fridays at 9:00 a.m.
2. Counsel must first clear the hearing date with the other parties prior to contacting the Coordinator. You must provide the Court with the name of the case, the case number, type of hearing, hearing date requested and name and telephone number of the filing attorney.
3. Prior to the hearing of **any** motion, petition or application all counsel and parties representing themselves shall communicate in a good faith effort to eliminate the necessity of the hearing.
4. Discovery hearings are heard in this department. Discovery meet and confer obligations require an in-person conference between counsel. If a resolution is not reached, parties are required to meet and confer in person with the Court for all discovery-related hearings **prior to filing of any discovery motion**. Each side must serve and lodge a short brief, **limited to no more than 3 pages**, briefly discussing the issues to be discussed two days in advance of the meeting. To schedule an informal discovery conference (IDC) with the Court, please contact the Coordinator.
5. Counsel for moving parties must notify the Court as soon as possible regarding any matter to be taken off calendar or continued. Notice of continuances of hearings must be provided by the moving party.
6. Chamber copies of all papers filed should be provided to the Coordinator by the filing party.
7. The prevailing party must prepare an Order after Hearing in accordance with the requirements of Rule 3.1312.

VII. CASE MANAGEMENT AND OTHER CONFERENCES

1. The first case management conference is generally scheduled ninety (90) days after the action is filed. Plaintiff is required to give notice of this conference date to all other parties.
2. Case Management Conferences are generally heard Fridays at 10:00 a.m. and are scheduled as necessary to monitor the progress of the case and to assist counsel and the parties as the matter progresses. The parties should expect the Court to schedule review hearings approximately every sixty to ninety days.

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3. There will be a detailed pre-trial conference 30-60 days before trial to deal with procedural issues and preliminary matters in order to make the trial process as predictable and smooth as possible.

4. The conference may be a time for the Court to discuss trial evidence presentation and use of audio-visual equipment. The conference is not for the purpose of hearing motions in limine. An example of an issue for the conference: Product liability case in which the manner of presenting the underlying case is of concern. Will the Court allow counsel to read the transcript into the record? Live testimony? A combination of transcript and live testimony? Is a trial by jury requested?

5. Judicial Council Form CM-110, Civil Case Management Statement (required by CRC 3.725(c), is not well-suited for complex cases. Rather, the parties shall file a joint case management statement no later than fifteen calendar days prior to the hearing for each conference as described below:

(a) brief objective summary of the case,(b) significant procedural and practical problems which may likely be encountered, (c) suggestions for efficient management, including a proposed timeline of key events, and (d) any other special consideration to assist the Court in determining an effective case management plan.

A status conference statement may be filed as an alternative to the case management statement when appropriate. A status conference statement is generally less detailed than a case management statement and is to be used to advise the Court of progress or developments in the case which have occurred since the last review hearing.

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VIII. CASE MANAGEMENT AND REFERENCE ORDERS

1. Case Management Orders are not required in all cases, but may be helpful in cases where the sequencing and timing of key events are necessary in the management of the litigation and preparation of the case for trial. However, even if a case management order is not necessary in a particular case, all complex cases must be managed by counsel, or the court, or both.
2. Mediation and Reference matters should not commence until all parties are before the Court but not later than six months after the original complaint was filed, except for good cause.
3. Mediation and Reference matters should be concluded 12 months after their initiation (approximately 18 months after the original complaint was filed), except for good cause.
4. Brevity in drafting the Order may help focus your case and assist in reaching the desired goal (i.e., early informed resolution of your case in a cost-effective manner).
5. After a date is scheduled with the Court, it may not be continued by stipulation of the parties without the Court's consent. It may be continued for good cause after noticed motion.

IX. MANDATORY SETTLEMENT CONFERENCES (MSC)

1. No case will be tried before a good faith effort is made to settle. Counsel must advise the Court as soon as possible, and in no event later than the date the MSC is set, if there is an objection to the trial judge's participation in the mandatory settlement conference. Mandatory settlement conferences set on the court's calendar are typically set at the time the trial is set, and generally, the final mandatory settlement conference takes place a week to two weeks before the first day of trial, typically on a Wednesday.
2. Trial counsel, parties and persons with full authority to settle the case must personally attend unless excused by the Court. If insurance coverage is available to satisfy the plaintiff's settlement demand and a representative of defendant's insurer **with full settlement authority** attends the mandatory settlement conference with defendant's trial counsel, named defendants need not attend unless their personal consent is necessary to settle the case. Named defendants must also personally attend the mandatory settlement conference when (a) there is an insurance coverage dispute; (b) plaintiff seeks to recover damages not covered by insurance; or (c) plaintiff's demand exceeds insurance policy limits. **Failure to appear will result in the imposition of sanctions.** Settlement Conference Statements must be filed at least five (5) court days before the scheduled conference (Rule 3.1380).
3. If a party objects to the trial judge's participation in the MSC, the party must advise the judge or courtroom clerk of its objection prior to the setting of the MSC. If the parties agree to have the

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MSC conducted by a judge other than the assigned judge, the parties should first determine the other judge's availability before asking the assigned judge to order the settlement conference. However, it is presumed that the judge to whom a case is assigned shall conduct the MSC.

5. Any request for a waiver of the requirement to personally appear at the MSC, whether conducted by the Court or a special master, must be made by written application to the Court.

X. MINI-TRIALS

There may be a pivotal issue, such as a special defense or evidentiary ruling, upon which the rest of the case depends. If counsel agree, the Court will set aside time before or during the trial to hear mini-trials on such issues. Time will be appropriately limited. Briefs and factual stipulations must be submitted in advance. Limited testimony may be taken, for example, as in an Evidence Code § 402 situation. Contact the Coordinator to schedule a date and submit a stipulation signed by all affected counsel.

XI. PRE-TRIAL MEET AND CONFER

Parties' Pre-Trial Conference - At least 20 days before trial, counsel shall meet and confer and execute necessary documents as listed below. Counsel for the plaintiff shall arrange the conference at a mutually agreeable time and location.

At the conference, the parties shall:

1. Prepare a **Joint Statement of the Case**.
2. Prepare a **Joint Witness List**, excluding impeachment or rebuttal witnesses, with real time estimates.

Witness lists should not be exaggerated. Only witnesses that a party expects to actually call should be listed, with a brief synopsis of the proposed testimony. In addition to the list contained in the statements, each list should also be prepared in the form attached as follows. A copy should be sent, in Excel format, to rwalker@scscourt.org. Witnesses should be listed last name first. Titles (e.g. Dr., Officer) should be placed after the comma following the last name. This is so that lists can be sorted correctly.

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As noted above, Counsel should include in their witness list the amount of time they expect to spend on direct examination of each witness. The amount of time should be stated in minutes (*not* days or hours). Counsel must also be prepared to state at the conference how much time they will require for cross-examination of each witness identified on the other party's list.

At the conference the Court will make separate arrangements for the preparation of a joint list, for jury selection purposes, of possible witnesses and persons or entities who might otherwise be mentioned at trial.

Format for Witness Lists

Plaintiffs' List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Smith, John	P	20		5	40	Formation of contract
Brown, Nancy	P	15		5	30	Breach of contract
White, Ron	P	70		15	115	Damages
Black, Peter	P	60		15	105	Formation of contract
Garcia, Dr. Ruth	P	120		30	210	Damages
Rogers, Officer Ted	P	60		10	70	Arrest of Susan Petersen

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Defendant's List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Doe, Edward	D	20		5	35	Formation of contract
Chang, Sam	D	75		15	120	Damages
Martin, Dr. Eric	D	120		30	210	Damages

3. Exchange **exhibits** and inspect photos and diagrams (to be submitted on the date of trial), excluding those contemplated to be used for impeachment or rebuttal. **Stipulate to all facts amenable to stipulation.**
4. Prepare a **Joint List of Controverted Issues**. If all the parties fail to agree to an issue as controverted or uncontroverted, then the issue is controverted. (Required for both jury and non-jury trials)
5. Exchange all **motions** in limine, verdict forms, etc.
6. Prepare **voir dire questions** for the Court to include when examining the panel.
7. Execute the **Statement of Compliance**.
8. Prepare joint proposed **jury instructions** (CACI only) and exchange disputed instructions.

The above items, including opposition to motions in limine, trial briefs and the Statement of Compliance signed by all counsel, shall be submitted to the Complex Civil Litigation Desk or to the courtroom clerk in the department of the judge to whom the case has been assigned for trial, **no later than noon of the Friday before trial.**

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XII. TRIALS - GENERALLY

1. **General Matters – the following applies to all trials (jury and non-jury):**

- a. Trials generally will proceed four days a week as follows: Monday through Thursday (9:00 a.m. to 4:30 p.m.). The Court will provide the parties, generally at the conclusion of the Mandatory Settlement Conference, a proposed trial schedule.
- b. Jury deliberations will proceed five days a week, from 9:00 a.m. to 4:30 p.m.
- c. Trial attorneys should be in the courtroom 15 minutes prior to the start of each morning session. Punctuality is not only a courtesy to others, it is required. Counsel should expect that the court will take appropriate action if counsel is late for any appearance and does not have a justification for a late appearance.
- d. Before rearranging tables or other courtroom furniture, or installing equipment such as projectors or screens, permission must first be obtained from the bailiff or the Court.
- e. Unless the Court expressly advises otherwise, counsel may not approach a witness who is testifying to hand the witness exhibits, or to help the witness locate portions thereof, without first obtaining the Court's permission.
- f. Counsel must advise opposing counsel and the Court of the identity of each witness intended to be called by 4:00 p.m. the day preceding the time for the witness of witnesses to testify.
- g. Counsel presenting their case shall be expected to have witnesses ready to call through at least 4:30 p.m., and may be deemed to have rested their case if they are not prepared to proceed. Counsel shall advise the Court immediately of any circumstances which may prompt a request for a modification of the established trial schedule.
- h. Counsel should advise the Court at the outset of the proceedings, or as soon as the issue become apparent, of any legal issues or evidentiary matters that counsel anticipate will require extended time for consideration or hearing outside the presence of the jury.
- i. If during the course of trial, counsel wish to discuss a matter with the Court and opposing counsel outside of the presence of the jury, counsel **MUST** advise the Court of this request at the conclusion of the preceding court session and **NOT** immediately before proceedings are scheduled to resume.

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- j. The amount of jury fees required to be posted in advance of a jury trial is \$150.00. If a case settles after jury fees have been deposited, the jury fees will not be returned unless the Court is notified of the settlement by 2:00 p.m. on the court day preceding the trial date for which the deposit was made.
- k. Counsel must confer in advance of the trial, attempt to stipulate on as many issues and facts as possible, and reduce all stipulations to writing. The written stipulation is filed and during jury trials is read aloud into the record.
- l. At the end of each day, counsel must clear work areas, including the area in the rear of the courtroom.

2. Documents

By such time as the Court may direct in a pretrial order (normally no later than 12:00 p.m. on the Friday before Monday on which trial is scheduled to begin), counsel for each party shall:

- a. Deliver to the clerk and opposing counsel, a list of the witnesses which the party anticipates calling as part of its case-in-chief, with a succinct (no more than one or two sentences) statement of the general subject matter of the witness' testimony and an estimate of the time that will be required for the direct examination of each such witness.
- b. Deliver to the Court and opposing counsel proposed jury instructions and a proposed form of jury verdict.
- c. Lodge with the clerk the original of all deposition transcripts to be used during the course of the trial. If counsel anticipates reading from the deposition transcript for any purpose other than impeachment, counsel must deliver to opposing counsel a written specification of the pages and lines proposed to be read.

An extra copy of all motions in limine and supporting and opposing papers filed during trial (including in limine motions, proposed jury instructions and verdict forms and exhibit indices) shall be delivered to the clerk for use by the Court.

Counsel seeking to display to the jury any exhibit which required time and equipment to observe, such as slides, transparencies, movies, videotapes and audiotapes, **MUST** make such exhibit available to opposing counsel for review prior to commencement of the

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session of court at which the exhibit will be used. Proceedings will not be delayed to permit such a review if the review has not occurred by the time court is scheduled to begin.

3. Technology

Counsel must meet and confer regarding the use of computers, “elmos”, screens and other forms of equipment for showing evidence to the jury or Court. Counsel must confer with court staff regarding the placement and use of any such equipment.

4. Stipulations

Unless counsel states otherwise prior to the commencement of trial, all counsel will be deemed to stipulate:

1. At the commencement of each session of the Court, all parties, attorneys and jurors are present unless otherwise indicated.
2. After the first occasion on which the jury has been admonished not to discuss or prejudice the case in conformity with CCP § 611, the jury will be deemed to have been so admonished at every subsequent recess or separation without the need for further admonition; and
3. Reporting of juror voir dire is waived.

In addition, counsel will be requested to stipulate that if during the course of trial jurors and alternate jurors become unable to serve so that the total number of jurors and alternate jurors is reduced to fewer than 12, a verdict may be returned by nine of the 11 or by eight of 10 remaining jurors.

5. Opening and Closing Arguments

- a. Counsel should avoid discussing routine matters of court procedure - - such as the sequence of trial -- in opening statements and closing arguments. These matters will be covered by the Court and need not be repeated by counsel.
- b. Do not display charts, diagrams or proposed exhibits to the jury until they have been shown to opposing counsel outside of the presence of the jury. If opposing counsel indicates no objection, the exhibits or other object may be displayed to the jury without first requesting Court approval. If opposing counsel objects, the

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exhibit or object may not be displayed without Court approval, which must be requested outside the presence of the jury.

6. Examination of Witnesses

a. Objections: Counsel should only state the legal ground(s) of objection and, unless the Court specifically requests explanation or argument, should refrain from argument, elaboration, or any other form of extended objection-making. Counsel may request permission to approach the side bar to present argument, but should not approach unless and until the Court grants the request.

b. When calling a witness to testify under Evidence Code section 776, do not announce in the presence of the jury that the witness being called under this provision or as a “hostile” or “adverse” witness. Simply proceed with the examination of the witness; the Court will rule upon the applicability of section 776 only if such a ruling is required by an objection asserted by opposing counsel.

c. Do not propose a stipulation to opposing counsel in the hearing of the jury unless there is prior agreement of counsel.

7. Transcripts

a. The court reporter is under no obligation to provide transcripts of any portion of the proceedings to counsel during the course of trial. If counsel anticipates requesting a transcript of the testimony of any witness or other proceedings during the course of trial, arrangements should be made with the court reporter in advance so that arrangements can be made to obtain a second court reporter if necessary.

b. If counsel requests any court reporter to prepare a transcript of any portion of the proceedings, counsel **MUST** contemporaneously advise opposing counsel of the request and of the precise portions that will be transcribed.

8. Jury Trials

a. Motions in limine and other trial-related preliminary motions (such as Evidence Code § 402) must be submitted in writing before answering ready. Motions *in limine* may be ruled on by the court without hearing. Such motions should be brief

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and should address specific subject matter. See *Amtower v. Photon Dynamics, Inc.*, (2008) 158 Cal.App.4th 1582.

- b. CACI instructions are to be used. Submit proposed instructions in Word format. When reasonably possible, mark up the official version rather than retyping so the changes are apparent to the Court and other counsel. The Court may send at least 4 “clean” sets of instructions provided by counsel into the jury room. “Clean” means just the text of the instruction, as corrected. Plaintiff has the primary, but not exclusive, responsibility to provide the “clean” sets, in binders.
- c. Counsel should consider stipulating to fewer than 12 jurors to try the case. They should also consider stipulating to continue with the trial with fewer than 12 jurors, should one or more be unavailable. Counsel should be prepared to identify the number of alternates that they intend to recommend.
- d. Hardship Requests - Requests by members of the panel to be excused on the ground of undue hardship will be considered by the court prior to beginning voir dire examination.
- e. Jury selection proceeds generally under the “6 pack” method, modified to fit the case. Court and counsel will work out the management of voir dire in accordance with CCP § 225.5 to fit the circumstances of the case. Counsel may submit specific juror questions for the Court to consider asking during voir dire.
- f. Voir dire examination will initially be directed to 18 members of the jury panel seated in the jury box. Any of these 18 panel members excused for cause will be replaced by additional panel members before peremptory challenges begin. Peremptory challenges will then proceed, directed to the first 12 panel members, who will be replaced by the next six panel members in order as any of the 12 are peremptorily challenged. The peremptory challenges will continue until the panel seated in the jury box is reduced to 11 members, at which time additional panel members (normally an additional seven) will be selected and examined prior to resuming peremptory challenges. Whenever there are successive passes from all parties who have not exhausted their challenges, or all parties exhaust their challenges, the jury has been selected and will be sworn. The same process will then continue for the selection of alternate jurors.
- g. All challenges for cause will be heard out of the hearing of the jury panel.
- h. The Court will conduct a detailed voir dire examination. Before concluding questioning, the Court will ask counsel at the side bar whether they wish the Court to address any additional questions to any or all of the panel members, and will

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permit counsel to examine the panel. An appropriate time limit will be fixed by the Court.

- i. The Court preinstructs the jury once it is empaneled. CACI Instructions relating to the basic responsibilities of the jurors, management of evidence and the like will be given and, in most cases, repeated at the close of trial.
- j. Objections of any kind are to be addressed to the Court (not to other counsel) with a concise statement of the legal grounds. Argument on the objection without invitation by the Court is not permitted. Advise the Court if argument is necessary for the record.
- k. Make no references to charts, models, blowups or other demonstrative evidence in front of the jury unless: (a) it is in evidence; (b) counsel have previously stipulated the item is in evidence; or (c) you have leave of Court to use the reference.

XIII. TRIAL EXHIBITS

1. **Introduction**

- a. The digitalized representations of such exhibits may be presented to the Jury/Court as substitutes for the exhibits themselves. Counsel should keep in mind that one of the purposes of the complex project is to enhance the orderly presentation of evidence to the fact finder, and to maintain the record for potential post trial proceedings.
- b. Exhibits may be in either electronic or physical form. Physical exhibits are not required to be presented in a digitized format. However, at the conclusion of trial the court may order that a photo be substituted and stored electronically in lieu of the physical evidence.
- c. Parties must exchange exhibits excluding documents for bona fide impeachment at the Pre-Trial Meet and Confer. Each counsel must provide the Court with an EXHIBIT LIST describing each exhibit, indicating whether the exhibit is to be admitted into evidence by stipulation.
- d. Counsel must submit to the Clerk original negotiable instruments for cancellation pursuant to Rule 3.1806, unless otherwise ordered by the Court.

2. **Submission of Exhibits**

- a. Counsel must provide the Court with the exhibits, plus one copy. Exhibits will be marked by the Clerk, as they are identified, in chronological order. Exhibits shall not be pre-marked by counsel.

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b. Enlargements and transparencies normally will not be admitted into evidence. Any large exhibit or transparency should be accompanied by an 8½ x 11 version to which the exhibit tag is attached. Models, etc. should be photographed if proposed as exhibits. Be sure to discuss evidentiary issues of this nature with opposing counsel.

c. Interrogatories and Requests for Admissions which are expected to be used at trial must be extracted and lodged with the Court, and a copy given to counsel, at the appropriate time. In jury trials, questions and answers must be read into the record, subject to proper objections. The extracts may be submitted as exhibits in a Court trial. In no case will entire sets of written discovery documents be lodged or received.

d. Before trial commences, counsel will be asked to sign a stipulation for the return and maintenance of exhibits when the trial is completed. Plaintiff will maintain joint exhibits, unless otherwise stipulated.

3. Use of Deposition Transcripts

a. Deposition transcripts which are expected to be used at trial must be lodged with the Court on the first day of trial. Pertinent provisions must be read into the record in jury trials, subject to proper objections. In Court trials, extracts may be submitted and marked as exhibits. In no case will an entire transcript be received.

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Hon. James P. Kleinberg
Judge, Superior Court, State of California, County of Santa Clara
191 North First Street
San Jose, CA 95113
Courtroom Clerk Number, Department 1: (408) 882-2110

Judicial Assignments and Activities:

Current: Complex Civil Litigation, January, 2010 - present

Appointed to the bench, 2002 and re-elected (unopposed) in 2004 and 2010
Criminal misdemeanor assignment, 2002
Family Division, January, 2003 – January, 2005
Civil Discovery, January 2005 – September, 2006
Civil Trials, September 2006 – January, 2008
Civil Case Manager, January, 2008 – January, 2010
Supervising Judge, Civil Division, January, 2010 – January, 2011
Member, Superior Court Executive Committee, 2004
Chair, Superior Court Technology Committee, 2004 - present
Member, CJER Judicial Technology Education Committee, 2004

Other professional activities:

Advisor to the Executive Committee, Section of Litigation, State Bar of California, 2002-present
Member, and Vice President, William A. Ingram Inn, American Inns of Court, 2004 – present
Former President, San Francisco Barristers' Club, Former Director, Bar Association of San Francisco and the Santa Clara County Bar Association
Former commercial arbitrator, American Arbitration Association
Former Member, Board of Visitors, University of Michigan Law School
Richard H. Holton Teaching Fellow, Haas School of Business, University of California at Berkeley
Member, Board of Governors, Association of Business Trial Lawyers (Northern California), 2011-present

Education and Practice Experience:

J.D., University of Michigan Law School, 1967
B.A., University of Pittsburgh, 1964

Partner, McCutchen, Doyle, Brown & Enersen LLP (now Bingham McCutchen, LLP) in San Jose, Palo Alto and San Francisco for over 19 years (1983-2002)

Associate and partner, Petty, Andrews, Tufts & Jackson (later Jackson, Tufts, Cole & Black) (San Francisco and San Jose) for 14 years (1969-1983)

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Trial Attorney, U.S. Department of Justice, Antitrust Division (1967-68)

Specialized in business litigation, including antitrust, intellectual property, securities, contract, arbitration

Listed in Best Lawyers in America for over ten years under “Business Litigation”

Speaking and writing for continuing education programs on litigation topics: State Bar of California, ABA, PLI, CEB, ABTL, CJA, Lowman, Pincus, Columbia Law School Program on Delaware Court of Chancery (2011), local bar associations.

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