

Superior Court of California County of Orange

HONORABLE RANDALL J. SHERMAN

CLERK: Jason Phu
COURT ATTENDANT: Jose Boc

POLICIES AND PROCEDURES – DEPARTMENT CX105

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Welcome to Department CX105. To facilitate the progress of your case and assure its timely disposition, this Court has established the following procedures. Counsel also should be familiar with and must comply with Division 3 of the Local Rules of the Orange County Superior Court.

WEEKLY DEPARTMENT SCHEDULE

1. **Trials** – Monday-Wednesday, 9:00 a.m. to 4:30 p.m.
2. **Law and Motion** – Friday, 10:00 a.m.
3. **Ex Parte Applications** – Monday-Friday, 1:30 p.m.
4. **Pre-Trial Conferences** – Friday, 1:30 p.m.
5. **Case Management Conferences (which serve as the Initial Status Conference)** – Friday, 9:00 a.m. CRC Rule 3.725 requires the filing of a Case Management Statement at least 15 days before the CMC, but this court requires the Statement only a week before the CMC. Counsel should use pleading paper rather than Judicial Council Form CM-110, but should include in the Statement a discussion of the applicable subjects set forth in CRC Rule 3.727. The parties are encouraged to meet and confer and file a joint statement.
6. **Status Conferences** – Thursday & Friday, 9:00 a.m. and 1:30 p.m. Status Reports must be filed at least a week before the Status Conference, and should be on pleading paper rather than on Judicial Council Form CM-110.
7. **Review Hearings, Order to Show Cause Hearings and Default Prove-Up Hearings** – Thursday & Friday, 9:00 a.m. and 1:30 p.m.

TRIAL PROCEDURES

1. **Pre-Trial Conferences** – The court normally will hold a Pre-Trial Conference about 10 days before the trial date. Counsel should expect the following subjects to be discussed at the Pre-Trial Conference:

General Subjects: The causes of action that will be tried; whether bifurcation or phasing is appropriate; the latest time estimate; any interpreter issues; any witness availability issues or other scheduling issues; any stipulations for admissibility of or foundation for exhibits; any intended equipment usage; using deposition testimony; whether the parties want to give mini-opening statements early in voir dire to give the jurors a brief overview of the case and each party's positions; the submission of jury instructions and verdict forms; allowing jurors to propose questions of witnesses; waiving the court reporter for the reading of jury instructions and/or voir dire.

Order of Proof: Who are the witnesses, and how long will direct and cross examination be? This information is important and should be as precise as possible to accurately estimate the actual number of trial days for the jury and the court. Jurors get upset and frustrated when they are kept longer for the trial than as promised.

Motions in Limine: Each motion in limine must be numbered on the face page of the motion. Please avoid overbroad, general motions such as those asking the court to exclude "all hearsay evidence" or "all cumulative evidence" or "evidence not disclosed in discovery". Motions in limine should be designed to exclude specific items of evidence, not broad categories of evidence. Be specific and concrete in explaining what you want excluded. The court expects counsel to meet and confer and resolve as many of these motions as possible before trial, and before discussing them with the court. Untimely filed motions or oppositions might not be considered.

2. **Trial Documents – OCSC Local Rule 317** – The court requires that counsel comply with Local Rule 317. This Court requires that some documents be submitted earlier than the deadlines set forth in the Local Rule.

At least **two days before the Pre-Trial Conference**, the parties must deliver to the courtroom the Joint Trial Notebook required by Local Rule 317(B).

Motions in limine must be electronically filed and served at least two weeks before the Pre-Trial Conference, and any oppositions must be electronically filed and served at least one week before the Pre-Trial Conference. The Motion in Limine Notebook required by Local Rule 317(C)(2) **must be brought to the Pre-Trial Conference**.

The documents identified in Local Rule 317(B)(3)-(11), which will be part of the Joint Trial Notebook that must be delivered to the courtroom at least two days before the Pre-Trial Conference, must be **electronically filed at least two weeks before the Pre-Trial Conference**.

3. Exhibits

- a. **Exhibit Lists** – At the Issue Conference before trial, counsel should jointly prepare an exhibit list. Each exhibit should be listed by exhibit number. Do not use letters for exhibits. Each counsel should use a separate range of numbers, with plaintiff's exhibits to begin with Exhibit 1. (An exception may be made if the parties are carrying over unique exhibit numbers used at depositions.) Different parties should not use the same exhibit number, and duplicate exhibits should be avoided. The exhibit list should set forth each exhibit number along with a very brief description of the exhibit, including the date of the document or a notation that the document is undated. Each exhibit should consist of only one document, although multiple photographs or other related documents like bank statements may be marked as one exhibit as long as each page of the exhibit is separately numbered. Page numbers must be placed on all pages of multi-page exhibits. Copies of the exhibit list should be made for the Court, the clerk, the court reporter, and each counsel.
- b. **Exhibit Notebooks** – Exhibits should be placed in circular three-ring binders with tabbed dividers. Each tab should bear the corresponding exhibit number. A copy of the Exhibit List should be inserted in the binder before the first exhibit. The original exhibits should be given to the clerk at the time of trial, with exhibit tags. Another set of such binders, without exhibit tags, should be prepared for the court.
- c. **Exhibit Tags** – Each original exhibit must have a green court-exhibit tag **attached by counsel**.
- d. **Special Exhibits** – If any party intends to use a video exhibit or videotaped deposition, the court should be advised at the earliest opportunity since the court's permission is required before videos, tape recordings, overhead projectors and the like may be used at trial. It is each party's responsibility to supply the necessary equipment and have it set up before trial or during a recess.
- e. **"Rebuttal" and "Impeachment" Exhibits** – The court takes a dim view of attempts to use exhibits that were not identified and marked before trial by characterizing such documents as rebuttal or impeachment exhibits. Such documents will not be admitted unless the court concludes they are truly for rebuttal or impeachment. Documents which a defendant uses to "rebut" the plaintiff's case are not rebuttal documents. Rather, rebuttal exhibits usually are those used by a plaintiff in response to the defendant's case in chief, but which were not expected to be part of the plaintiff's case in chief.

4. **Jury Instructions and Verdict Forms** – Each party should include proposed jury instructions (the entire instruction, not just the CACI number) and verdict forms in the Joint Trial Notebook. If special verdict forms are proposed, please ensure they are complete and contain no inconsistencies. This court generally favors the exclusive use of CACI instructions unless CACI completely fails to cover the subject. The court will pre-instruct the jury with applicable instructions from the CACI 100 series before opening statements. The court will give the substantive jury instructions before closing arguments and the procedural instructions from the CACI 5000 series after closing arguments.
5. **Voir Dire** – This court uses the eight-pack method of jury selection, and normally seats 14 jurors with two non-designated alternate jurors. A long trial estimate may result in more alternates. Alternates will be selected by lot at the conclusion of the trial. Peremptory challenges should be addressed only to the group of potential jurors in the jury box. The court will conduct the initial voir dire of prospective jurors using applicable questions contained in Standard 3.25 of the Judicial Council’s Standards of Judicial Administration. In the typical case, counsel should conduct their voir dire within 40 minutes for the first group of potential jurors, and within 20 minutes for each subsequent group. Counsel may have more time if the case warrants it.
6. **Trial Conduct**
 - a. Appropriate titles (e.g., Mr., Ms. or Dr.) rather than first names are to be used when addressing witnesses (unless they are children), jurors or one another.
 - b. Do not make speaking objections. Simply state the legal grounds for the objection. Any argument about a ruling will be done either at the bench, at sidebar, or on the record outside the presence of the jury.
 - c. Counsel should speak from behind the counsel table or lectern unless the court has given permission to approach a witness.
 - d. It is all counsels’ responsibility to arrange the appearance of witnesses to avoid delay, to confer during trial as to when witnesses will be needed, to advise the court at the earliest opportunity of any anticipated problems with the presence of witnesses, including any need to call a witness out of order, and to advise witnesses of the appropriate manner of testifying, including proper behavior and attire in the courtroom and any rulings that may apply to their testimony. Counsel should keep all other counsel informed as to who their next few witnesses will be to facilitate counsel’s preparation.

LAW AND MOTION PROCEDURES

1. Law and Motion matters are heard every Friday at 10:00 a.m. Motion reservation dates must be made on the court's website. Hearing dates are not obtained from the department.
2. Tentative rulings usually will be available anywhere from one to three days before the hearing. They will be posted on the court's website at:
<http://www.occourts.org/tentativerulings/rshermanrulings.htm>
3. If counsel intends to submit on the tentative ruling, they should telephone the court clerk and notify opposing counsel as soon as is feasible. If all parties do not submit on the tentative ruling, oral argument will be held. If no one appears for argument, then the tentative ruling will most likely become the final ruling.

EX PARTE PROCEDURES

1. Ex Parte applications are heard every court day at 1:30 p.m. The requirements contained in California Rules of Court, Rules 3.1200-3.1207, will apply. Applicants must be sure they comply with the requirements of notice to all other parties by 10:00 a.m. the court day before the hearing, a showing of the irreparable harm that will occur if the relief requested is not granted, and a proposed Order.
2. The applicant's papers must be filed by 3:00 p.m. on the court day before the hearing. The clerk in Department CX105 must be notified of the filing of the Ex Parte application by 12:00 noon on the court day before the hearing. If any party intends to oppose the Ex Parte application they should telephone the clerk in Department CX105 at (657) 622-5305 and file any opposition papers as soon as is feasible. Courtesy copies of any opposition papers should be either submitted before or brought to the hearing.
3. The Court usually will hear oral argument on Ex Parte matters. If other matters are set for 1:30 p.m. there may be a delay in being heard. Unopposed matters may be decided in chambers before the hearing time.

COURTROOM DEMEANOR, CONDUCT AND ETIQUETTE

Counsel are expected to adhere to the provisions of the California Attorney Guidelines of Civility and Professionalism (State Bar of the State of California, adopted July 20, 2007).