

Department L-611

Trial Rules - 2020

SETTLEMENT CONFERENCES:

- The judge outsources all settlement conferences to avoid any appearance of bias or predisposition at time of trial.
 - Voluntary Settlement Conferences:
 - The court encourages early and *robust* voluntary settlement conference(s).
 - Mandatory Settlement Conference ("MSC"):
 - Thirty (30) days before trial, the parties shall attend a mandatory settlement conference.
 - The MSC maybe conducted by:
 - An experienced family law attorney (no cost: judge pro tem selected from court's list of volunteer FL attorneys);
 - Retired judge or commissioner (**by stipulation**);
 - Mediation Groups (**by stipulation**) e.g. JAMS, ADR, ARC, JUDICATE WEST, SGSB FAMILY LAW MEDIATION, BENCHMARK RESOLUTION GROUP.
 - The parties and their counsel.
 - The confidential MSC maybe conducted at any agreeable place and time. See Evid. Code § 1152.

CONTINUANCES:

- Disfavored under law. See CRC 3.1332 and OCLR 701.1. Compare OCLRC 705(D).
 - The court's duty is to resolve all trials *promptly, efficiently and fairly*.
- Except for good cause shown, any trial *in-progress* will continue hour-to-hour until complete, notwithstanding any inconvenience to counsel, party or witness(es).
 - Attorneys, parties and witnesses are expected to subordinate their personal and professional schedules in favor of the trial *in-progress* and yield to the court's availability.

MEET AND CONFER/TRIAL READINESS CONFERENCE (TRC):

- *Two weeks* before trial, the parties are required to meet and confer and *exchange* the following documents:
 - Current Income and Expense Declarations; See CRC 5.260; OCLR 702;
 - Joint Statement of Issues; See OCLR 709(c) and form # L-0966;
 - Negotiate trial stipulations;
 - Exchange witness list (FC § 217);
 - If applicable, prepare joint statement/finding characterizing the MSL; See FC § 4332;
 - If the parties cannot agree, each side shall prepare and lodge a concise characterization of the MSL (FC § 4332) and provide an e-copy to Diane Ruiz at d2ruiz@occourts.org.
 - Use a word-processing (editable) format - Word™ or WordPerfect™.
 - If applicable, prepare a common community Marital Balance Sheet/Propertizer;
 - If applicable, exchange forensic accountant expert reports **and**;
 - Arrange for the forensic accountants to meet and confer before trial and prepare a joint issue statement setting forth:
 - A side-by-side comparison of disputed facts;
 - Prepare a concise side-by-side comparison reconciling expert opinions;
 - Exchange trial exhibits and trial exhibit log;
 - See trial exhibit numbering system, below.

- Exchange proposed orders, rulings, and any findings/reasons required under the Family code (e.g. 4332, 3653(b), 4056, 4320, etc) and/or requested findings related to material and disputed facts.
 - The court strongly encourages proposed Order(s), Ruling(s) and Finding(s),¹ prepared in a word-processing (edible) format (*Word™* or *WordPerfect™*) - no .pdf format.
 - Practice Tip: Trial preparation starts with the “end in mind.”
 - *Before trial, lodge proposed rulings, orders, and findings directly in Department L611 and e-send a courtesy*
- Before trial, the court may conduct a TRC. See CRC 5.393(b).

DECORUM:

- Dept. L611 is *user-friendly*; the judge and courtroom personnel are poised to be *helpful*.
- Please maintain the dignity of the courtroom and keep the hearing *low-key*.
 - Witnesses and parties must dress appropriately;
 - Business casual dress, please.
 - No beach, gym or “weekend-casual” attire.
 - No food, coffee or soda.
 - Adjust all electronic devices to *quiet mode*.
 - No children allowed in the courtroom.
 - Avoid *ad hominem* comments toward counsel and/or the other party;
 - At all times, conduct yourself with integrity, dignity, and civility.
 - Address all comments to the court.
 - Avoid triggering or inciting courtroom drama.
 - Stay focused on the legal issues at hand.
 - Focus testimony on *relevant* historical behavior and events and current circumstances.
 - Note: Subject matter jurisdiction and remedies are limited to the Family Code.
 - The court is unable to redress or sooth un-resolved emotional issue(s) following a failed relationship.

SELF-REPRESENTED LITIGANTS (“SRL”):

- While the judge will take reasonable and appropriate steps to enable a self-represented litigant access to the court, a self-represented party is nonetheless held to the same standards as an attorney. The judge is neutral and will not assist any party.
 - Attorneys and self-represented parties must comply with all applicable statutes, Local Court Rules and the California Rules of Court. See OCLR 700.5.
 - See also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 [giving self-represented parties “exceptional treatment” is unfair to other parties]; *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [“Self represented parties are held to the same standards as attorneys.”].)

¹ Factual findings are reserved for the principal issues and not for subsidiary issues or evidentiary rulings. A principal issue is one essential to the judgment and closely and directly related to the trial court’s determination of the ultimate facts in the case. *Golden Eagle Ins. Co. v Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372. A trial court need not make minute findings as to individual items of evidence. *People v Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3rd 509,524.

- Prepare and lodge proposed a ruling(s) and or order(s); due the Friday before start of trial.
 - E-copy _____, in a word-processing (editable) format - using either Word™ or WordPerfect™ - No PDF version.
- Prepare and lodge proposed findings/reasons in support of your proposed ruling/order(s).
 - E-copy _____ in a word-processing (editable) format - using either Word™ or WordPerfect™ - No PDF version.
- If applicable, lodge a proposed statement characterizing the MSL.²
- If applicable, lodge a concise “side-by-side” report that reconciles the major differences between dueling experts;
 - Include a side-by-side comparison of disputed facts;
 - Include a side-by-side comparison of expert opinions.
- If applicable, submit a joint community Marital Balance Sheet/Propertizer;
- If applicable, lodge your proposed DissoMaster™ or Xspouse™ data summary page;
- If applicable, lodge a joint Inventory of disputed furniture, furnishings and miscellaneous household items and include each party’s proposed division (and any charge);
- If applicable, lodge Depositions:
 - Note: A party’s deposition may be used for any purpose at trial. See CCP § 2025.620. See also Evid. Code § 1291.

TRIAL EXHIBITS:

1. *Redact all confidential information* from trial exhibits, e.g. social security numbers and or financial account numbers. See CRC 1.20(b) and FC § 2024.5(a).
2. Trial exhibit numbering scheme:
 - The court uses the **federal model** for marking trial exhibits; **all trial exhibits are numbered - not lettered.**
 - Petitioner is reserved trial exhibit numbers 1-99;
 - Respondent is reserved trial exhibit numbers 100-199;
 - If applicable, Minor’s counsel is reserved trial exhibit numbers 200-299.
3. Pagination:
 - To eliminate delay and confusion, any *multi*-page trial exhibit must include page numbers;
 - If the multi-page trial exhibit is without internal pagination, **add page numbers using any practical means.**
4. Organize the trial exhibits into a three-ring notebook(s) with easy flow page lifters suitable for a three ring binder (see Wilsonjones easyflow II page lifters);
 - *White* notebooks for Petitioner;
 - *Black* notebooks for Respondent.
 - Trial exhibits - Five Copies:
 - Clerk’s copy (clerk will affix evidence tags as each trial exhibit is identified during the trial.);
 - Bench’s copy;
 - Petitioner’s copy;
 - Respondent’s copy;
 - Witness copy.
 - Divide trial exhibits by Tabs and *three-hole punch* each trial exhibit:
 - Do not over-fill notebooks;
 - Use a *large* three-hole punch (13/32 diameter) for easy page turning.
5. Inventory trial exhibits within a trial exhibit log.
 - Provide an e-copy
 - Prepare a trial exhibit log in word-processing (editable) format - Word™ or WordPerfect.™ E-copy to clerk.

² The attorneys are encouraged to meet and confer and agree upon a joint statement characterizing the MSL. If no agreement, then each party shall submit a separate statement characterizing the MSL. See FC § 4332.

PRACTICE TIPS:

- While courtroom personnel are friendly and poised to be helpful, the staff takes direction from the judge, *only*.
 - Do not direct the court's staff.
 - Do not approach ~~the Clerk~~ or Jenny Aguilar while the court is in session.
 - Do not direct the bailiff; the bailiff is a sworn deputy sheriff and is not your assistant.
 - Follow the bailiff's direction.
 - The bailiff will not retrieve witnesses from the hallway.
 - Do not direct the court reporter.
 - Ask the judge for any read-back testimony.
 - Speak at a moderate pace and avoid *cross-talk*.
 - When ordering a transcript, full payment (*in advance*) is required.
- From time to time, the court may go "off-record" for limited purposes (e.g. negotiate a parenting schedule, receive un-contested data toward calculating guideline child support).
 - When returning to "on-the-record" status, the court will briefly summarize the off-record talk and the parties may do the same.
- Without leave of court, you may approach the witness ***anytime you have a reason***.
 - Do not loiter or hover around the witness.
 - Unless you have a reason to remain near the witness, return to counsel table and continue with your examination.
- While everyone has a right to their opinion(s), that does not mean your opinion is correct and or admissible. Compare Evid. Code § 702. Opinion evidence is limited to witnesses qualified and designated as an expert. A party may offer opinion testimony under very limited circumstances. Otherwise, except for expert witnesses, admissible testimony is limited to personal knowledge about disputed, relevant and material facts. Compare Evid. Code § 702.
 - Don't waste time trying to prove-up irrelevant episodes, immaterial facts or fault. Compare FC § 2335 and Evid. Code § 210, 352 and 702.
- Attorneys: avoid asserting your personal opinions. Remember, "vouching" is improper attorney behavior.
- Want to be Persuasive?
 - "To be persuasive, you must be ***believable***: to be believable you must be ***credible***, and to be credible, you must be ***truthful***." ***Edward R. Murrow***.

TRIAL DOCUMENTS:

- The Friday before trial, file the following documents:
 - Joint Statement of Issues: See OCLR 709(c) and see form #L-0966.
 - Trial Brief. Required; see CRC 5.394 for content and filing dates.
 - File your joint statement of trial issues and trial briefs directly in Department L-611 and provide an e-copy
 - Witness list. See FC § 217;
 - Trial exhibit log;
 - Current Income and Expense Declaration (See CRC 5.260, OCLR 702; compare FC § 3667);
 - Any request for judicial notice;
 - Note: Any motion(s) in Limine will be heard before trial; call the clerk to schedule.
 - Separately prepare and number any motion in Limine and *include a proposed order*.

- Within the trial exhibit log, identify each trial exhibit by a trial exhibit number and include a **very brief description**, such as “bank statement”, “photo,” “e-mail,” or “text message.”
 - Similar trial exhibits (e.g. photo) will be distinguished by separate trial exhibit numbers.
 - The trial exhibit description has no legal significance.
 - After trial, the trial exhibits will be returned to one or both attorneys/party with the duty to serve as custodian pending any appeal.
 - Absent extraordinary circumstances, the court will not store trial exhibit(s).
6. During the trial and as introduced, the clerk will affix an evidence tag to any marked trial exhibit.

MOTIONS IN LIMINE (“MIL”):

- Encouraged – resolution of MIL’s may expedite trial proceedings and may re-start settlement discussions.
- MIL’s shall be in writing, separately numbered and filed, and you must specify the exact relief requested, include P&A’s and *include a proposed order*. (CRC 3.20(b)(1)).
- Contact the clerk to schedule a pretrial hearing to resolve motion(s) in Limine.

TIME LIMITS, QUESTIONS BY JUDGE AND BIFURCATION OF ISSUE(S):

- Time Limits:
 - The court will afford both sides a reasonable amount of time to present evidence.
 - Note: The judge has broad powers to control the proceedings. See Code Civ. Proc., § 128 (a)(1)-(5); *People v. Woodward* (1992) 4 Cal.4th 376, 385.). See also Evid.Code § 320, 352, and 765. See also FC §§ 217.
 - It is within the power of the court to impose time limits.
 - “Some litigants are of the mistaken opinion during trial, they have *camping rights*.” *California Crane School Inc. v. National Commission for Certification of Crane Operators* (2014) 226 Cal.App.4th 12.
 - For example, a party is not entitled to take whatever time he/she believes necessary to question each witness. A judge has the obligation to efficiently resolve the pending case while also protecting the time and resources of the court, witnesses, parties and attorneys and not delay other hearings/trials.
- Questioning by the Judge:
 - The judge may direct questions to any party or witness. See CRC 5.113(g); FC § 217(a), Evid. Code § 775. Compare: The judge balances any need to ask questions against becoming embroiled in the litigation and or becoming an advocate for any party. Practice Tip: Ninety percent of asking good questions is listening to answers.
- Bifurcation:
 - The court may, on its own motion, bifurcate issues. See generally CRC 5.390.

OPENING STATEMENTS:

- Your trial brief [required – see CRC 5.394] and lodged proposed orders, rulings and proposed findings/reasons may serve as your opening statement.

CLOSING ARGUMENT:

- Time permitting closing arguments may follow the close of the evidence, or upon request, closing arguments may be scheduled to another day.
- Before oral argument, update proposed orders, rulings and findings/reasons to conform to proof.
- In the case of an extended or complex case, the court may request written closing arguments and if so, the court will negotiate a briefing schedule with the parties/attorneys.
 - Toward the end of trial, the court will discuss with counsel/self-represented party the form of closing argument.

- Any written closing argument, proposed ruling(s), order(s), and findings of material facts shall be filed directly in Dept. L-611 and a courtesy e-copy sent to Diane Ruiz at
 - Email the courtesy in a word-processing (editable) format - using either Word™ or WordPerfect™ - No PDF version.

STATEMENT OF DECISION/REQUIRED FINDINGS:

- A statement of decision is reserved for *trial events* (See generally CCP § 632) and certain limited proceedings. For instance:
 - Custody issues, see generally FC § 3022.3, and as applicable, see FC §§ 3011(e), 3041(a), 3048, 3082, 3083 & 3087.
 - Child support issues, see generally FC § 3654, and as applicable, FC §§ 3653(b), 4005, 4056, 4072.
 - Spousal support findings, see generally FC §§ 4320, and 4322.
 - Attorney fees and costs findings: see generally FC §§ 2030, 2032.
- A statement of decision serves to explain the factual and legal basis for the court's decision on the principal controverted issues. Detailed statements regarding evidentiary facts are not required. (Code Civ. Proc., § 632; *In re Marriage of Garrity & Bishton* (1986) 181 Cal.App.3d 675, 686-687.) The court is only required to state ultimate facts rather than reconcile disputed evidentiary facts.
 - The court is not required to make findings with regard to detailed and disputed evidentiary facts. (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67.)
 - The court is not required to make findings on immaterial issues and it need not address each question listed in a party's request. (*Id.* at p. 68.)
- If a statement of decision is timely requested or findings or reasons otherwise required per code, the court may require each party to prepare a proposed tentative statement of decision, findings or reason(s) and attach to written closing arguments.
 - Prepare the proposed tentative statement of decision in a word-processing (editable) format - using either Word™ or WordPerfect™ - No PDF version.
- The court will publish its tentative statement of decision, following the process under CRC 3.1590 et seq.
 - Any tentative statement of decision published by the court is subject to change.
 - After a tentative statement of decision is published, the parties may file comments or objections to the tentative statement of decision as provided in CRC 3.1590 (g).
 - The court will rule on any objection(s) and/or request for clarification (or modification) by minute order and follow the process under CRC 3.1590 as and for publishing a final statement of decision.

PREPARATION OF JUDGMENT:

- The court will appoint a party to prepare a proposed judgment and follow the process under CRC 3.1590. See also OCLR 710, CCP § 664.6
 - Any controversy related to judgment content may be resolved by a conference call with the judge or informal letters to the court; ruling by minute order.
 - Note: the judgment shall succinctly recite final orders and include any required finding(s) under statute (e.g. see FC §§ 4005 or 4332).
 - Compare: The "statement of decision" and "judgment" serve different purposes. According to *Civil Trials and Evidence*, Wegner, Fairbank, and Epstein, 16:219 "A judgment is the final determination of the rights of the parties in an action or proceeding." Compare also CCP 577.