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Massachusetts Department of
**ELEMENTARY & SECONDARY
EDUCATION**

Hearing Rules for Special Education Appeals

*These Rules replace and supersede the Hearing Rules for Special Education
Appeals issued in July 2005.*

February 2008

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Scope of Rules

The Department of Elementary and Secondary Education created the Bureau of Special Education Appeals (BSEA) to ensure due process rights of students with disabilities, parents, and public schools when a dispute arises concerning a student's educational program that cannot be resolved locally. The BSEA has jurisdiction over disputes among parents, school districts, private schools, and state agencies involving any matter concerning the provision of a free appropriate public education to a student with special needs.

The BSEA has the authority to resolve educational disputes pursuant to Massachusetts state law M.G.L. c. 71B (popularly known as Chapter 766), and its implementing regulations, 603 CMR 28.00. The BSEA has jurisdiction to resolve educational disputes under federal law as well, in accordance with 20 U.S.C. 1401 *et seq.* (the Individuals with Disabilities Education Act, "IDEA"), 29 U.S.C. 794 (Section 504 of the Rehabilitation Act of 1973) and the regulations promulgated thereunder, 34 CFR 300 and 34 CFR 104 respectively.

These hearing rules are governed by 603 CMR 28.00, federal due process procedures and the Massachusetts Administrative Procedure Act, M.G.L. c.30A. Unless modified explicitly by these Rules, hearings are conducted under the Formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.* These provisions require the BSEA to conduct fair and impartial hearings and to render written decisions that are based upon findings of fact and supported by substantial evidence.

How to Begin an Administrative Due Process Hearing

RULE I: *Hearing Request*

A. Who May File a Hearing Request

A hearing before the Bureau of Special Education Appeals (BSEA) may be requested by:

1. The student, if age 18 or over;
2. The parent(s);
3. The legal guardian, individual with court-appointed educational decision-making authority or duly appointed educational surrogate parent;¹
4. The programmatically and /or fiscally responsible school district, state educational agency or other public agency;
5. An individual with whom the child lives and who is acting in place of the parent; or
6. An attorney or advocate for any of the above.

B. Hearing Request Content

To begin the hearing process, the party requesting the hearing (i.e., moving party) must send a written hearing request to the opposing party.² At the same time, the moving party must send a copy of the hearing request to the BSEA. The date that the opposing party receives the hearing request is the operative date for calculating due process timelines.

The hearing request must contain the following information:

1. Name and address of student;
2. Name, address, and telephone number of:
 - a. Person requesting hearing;
 - b. Parent(s);
 - c. Legal Guardian, if any;
 - d. Individual given court-appointed educational decision-making authority, if any;
 - e. Duly appointed educational surrogate parent, if any; and,
 - f. Individual with whom the child lives and who is acting in the place of the parent;

¹ A copy of the appointment must accompany the hearing request for all individuals enumerated in this category.

² Sending the hearing request to the office of a school administrator, or to counsel for a party shall be deemed sufficient service.

3. Relationship to student of person requesting hearing;
4. Name of programmatically and fiscally responsible school district(s) and / or name of state educational agency or other state agency(ies);
5. Name of the school the child is attending;
6. In the case of a homeless child or youth, within the meaning of the McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available contact information for the child and the name of the school the child is attending;
7. If applicable, the name, address, phone number, and fax number of the attorney or advocate representing the party who is requesting a hearing;
8. The nature of the disagreement, including facts relating to such disagreement;
9. A proposed resolution of the disagreement to the extent known and available to the party at the time.

The party requesting a hearing shall not be allowed to raise issues at the hearing that were not raised in the hearing request unless the other party agrees or the hearing request is amended in accordance with state and federal law.

The hearing request must be signed and dated by the person who is requesting the hearing. The person requesting the hearing must submit a signed statement that he/she has sent the hearing request to the opposing party. The signed statement must indicate the method (e.g., fax, mail, hand-delivery) by which the request was sent.

C. Timeline for Requesting a Hearing

A parent or agency shall request an impartial due process hearing within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. This timeline does not apply if a parent was prevented from requesting a hearing due to either specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request or the school district's withholding of information from the parent that was required to be provided under federal law.

D. Response to Hearing Request

Within ten (10) calendar days of receipt of the moving party's hearing request, the opposing party must send to the other party and the hearing officer a response that specifically addresses the issues raised in the hearing request. However, if the school district sent a prior written notice to the parent regarding the issues raised in the parent's hearing request in accordance with 34 CFR 300.503, the school district need not send an additional response.

E. Sufficiency Challenge

If the non-moving party believes that the hearing request does not contain the elements set out in Rule IB, that party may file a written challenge to the sufficiency of the hearing request with the Hearing Officer and the other party (ies) within fifteen (15) calendar days of receipt of the hearing request.

The Hearing Officer shall rule as to the sufficiency of the hearing request within five (5) calendar days.

If the hearing request is found to be sufficient, the original timelines remain unchanged.

If the Hearing Officer finds the hearing request to be insufficient, the moving party may file an amended hearing request with the Hearing Officer and the other party, provided the moving party does so within fourteen (14) calendar days from the date of the insufficiency ruling. Failure to file the amended hearing request within 14 calendar days (or such other time as ordered by the Hearing Officer) may result in the dismissal of the case without prejudice.

F. Resolution Session

Under the IDEA, a hearing cannot be held in response to a parent's hearing request until

1. the school district has convened a resolution meeting;³ within fifteen (15) calendar days⁴ of the date of receipt of the hearing request; or
2. the parties have agreed to participate in mediation in lieu of the resolution meeting; or
3. the parties have notified the BSEA in writing that they have both waived the resolution session.

If the school district has not resolved the complaint to the satisfaction of the parent within thirty (30) calendar days of the receipt of the hearing request, the hearing may occur, and all of the applicable timelines for a due process hearing shall commence. If the parent does not participate in the resolution meeting or participate in mediation in lieu of the resolution meeting, the hearing will be delayed until the meeting is held.

G. Amending the Hearing Request

The moving party may amend the hearing request under two circumstances:

1. In response to a Hearing Officer's determination that a hearing request is insufficient, as described in E, above, the moving party may file an amended hearing request within fourteen (14) calendar days of the date of the Hearing Officer's determination.

³ The resolution meeting must include parent, relevant members of student's IEP team with knowledge of the facts identified in the hearing request, and a school representative with decision-making authority, to attempt to resolve the issue(s) in the hearing request. If the parent does not participate in the resolution meeting or in mediation in lieu of the meeting, the hearing will be delayed.

⁴ If, for reasons other than a parent's failure to participate, the school district fails to convene a resolution meeting within fifteen calendar days of receipt of the hearing request, it shall be deemed to have waived the resolution session, and the hearing may occur.

2. If the other party consents in writing, or the Hearing Officer grants permission. (The Hearing Officer may not grant such permission later than five (5) calendar days before the start of the hearing.)

Whenever a hearing request is amended, the entire process starts over for the purpose of timelines, as if the amended hearing request were a new request. However, to the extent the amendment merely clarifies issues raised in the initial hearing request, the date of the initial hearing request shall be controlling for statute of limitations purposes. For issues not included in the original hearing request, the date of the amended hearing request shall be controlling for statute of limitations purposes.

H. Representation - Attorney or Advocate Notice of Appearance

Representation. Individuals may appear on their own behalf and present their case without attorney or advocate assistance if desired. A school district or state agency may designate an individual to act on its behalf. Any party has the right to be accompanied, represented, and advised by an attorney or advocate. Attorneys or advocates must file a written notice of appearance. The filing of any pleading, motion, or other paper is deemed to constitute the filing of an appearance unless the paper states otherwise.

Withdrawal From Representation. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement indicating that notice of the withdrawal has been provided to the client and all other parties.

I. Intervention

Upon written request, a Hearing Officer may allow any person or entity that may be substantially and specifically affected by the proceeding to intervene or participate in the entire proceeding or any part of it.

J. Joinder

Upon written request of a party, a Hearing Officer may allow for the joinder of a party in cases where complete relief cannot be granted among those who are already parties, or if the party being joined has an interest relating to the subject matter of the case and is so situated that the case cannot be disposed of in its absence. Factors considered in determination of joinder are: the risk of prejudice to the present parties in the absence of the proposed party; the range of alternatives for fashioning relief; the inadequacy of a judgment entered in the proposed party's absence; and the existence of an alternative forum to resolve the issues.

How a Hearing

Date is Scheduled

RULE II: *Hearing Schedule*

A. Hearing Date

The BSEA shall schedule a hearing date that is:

1. thirty-five (35) calendar days after receipt by the opposing party of a hearing request filed by a parent /student or filed on behalf of a parent/student (as stated in Rule I A); or
2. twenty (20) calendar days after receipt by the opposing party of a hearing request filed by a school district; or
3. twenty (20) calendar days after receipt of a hearing request involving an appeal of assignment of school district responsibility.

To the extent possible, the Hearing Officer shall ensure that hearings requiring multiple days are held on dates close to one another.

B. Notice of Hearing

The hearing notice shall include the following:

1. time, date, location of hearing;
2. name of initial Hearing Officer;
3. deadline to file response to hearing request;
4. deadline to challenge sufficiency of hearing request;
5. deadline for convening the resolution meeting;
6. date for issuance of decision; and
7. the BSEA's phone number (if technical assistance is needed).

C. Expedited Hearings

1. The BSEA will grant expedited hearings only in the following situations:
 - a. Student Discipline: In matters relating to the determination of an appropriate educational program for an eligible special education student who has been subjected to disciplinary procedures:
 - (i) when a parent disagrees with either a school district's determination that the student's behavior was not a manifestation of the student's disability, or any decision regarding placement in the discipline context; or

(ii) when a school district asserts that maintaining the current placement of the student during the pendency of due process proceedings is substantially likely to result in injury to the student or others.

b. Other: When the person or entity requesting the hearing asserts that:

(i) the health or safety of the student or others would be endangered by delay; or

(ii) the special education services the student is currently receiving are sufficiently inadequate that harm to the student is likely; or

(iii) the student is currently without an available educational program or the student's program will be terminated or interrupted.

2. Form of Expedited Hearing Request

Requests for expedited hearings must be in writing, must conform to the requirements of Rule I, and must also state the reason why expedited status should be granted.

3. Expedited Hearing Schedule

Expedited hearings are scheduled as follows:

- a. A hearing on an expedited request will be held no later than fifteen (15) calendar days after the request is received by the opposing party.
- b. The non-moving party must file its response to the hearing request and challenge to the sufficiency of the hearing request, if any, no later than five (5) calendar days after receipt of the hearing request. The hearing officer will respond to the sufficiency challenge within two (2) calendar days.
- c. The resolution meeting must occur within seven (7) calendar days of receipt of the hearing request.
- d. Copies of all documents to be introduced and a list of the witnesses to be called at the hearing must be received by the opposing party (ies) and the Hearing Officer at least two (2) business days prior to the expedited hearing unless otherwise allowed by the Hearing Officer.
- e. A decision on the expedited issue(s) will be issued no later than ten (10) calendar days after the hearing.
- f. When expedited status is requested, the BSEA will consider which issues, if any, meet the criteria above, and will schedule only those issues on an expedited track. The remaining issues, if any, will be processed separately on a non-expedited track. Whenever possible, both cases will be heard by the same Hearing Officer.

- g. The moving party may make a written request to have a case moved from an expedited track to a regular track.
- h. If the parties agree to have the expedited hearing decided on documents only, they must inform the hearing officer, in writing, of their agreement.

D. Conference Call

In all non-expedited cases, the BSEA will schedule a telephone conference call to occur nineteen (19) calendar days after a hearing request has been received by the opposing party. In general, the call should last no more than ten (10) minutes and will address scheduling of future events, timelines for exchange of information (discovery), and any other scheduling issues. The Hearing Officer may entertain discussion of substantive matters if no further resolution meetings are anticipated during the thirty (30) day resolution session period.

Requesting a Postponement, Advisory Opinion, Or Advancement

RULE III: *Postponement /Advancement*

A. Postponement

Except in extraordinary circumstances, a request for postponement of a hearing must be submitted to the Bureau, in writing, at least five (5) business days in advance of the hearing date.

A postponement shall be granted only for good cause, at the request of a party. The reasons for granting the postponement must be documented in the administrative file.

1. At the Request of One Party

When one party seeks a postponement of any date in the hearing process, the party must file a written request with the Hearing Officer who may allow or deny the request.

At the time of the filing of the request, a copy must be sent to the opposing party. The party (ies) filing the request must submit a signed statement that he/she has sent a copy of the request to the opposing party (ies), and must indicate the method (e.g., fax, mail, hand-delivery) by which the copy was sent.

The written request must contain a reason for the postponement as well as proposed alternate dates. If the Hearing Officer allows the postponement, the Hearing Officer must also issue a new hearing date.

Opposition of the moving party to a postponement request must be given serious consideration by the Hearing Officer, and reasons for granting the postponement over the objection of the moving party must be documented in the administrative file.

2. By Agreement of Both Parties

When both parties agree to a postponement of any date in the hearing process, the parties must file a written request with the Hearing Officer. The request must contain a reason for the postponement as well as proposed alternate dates. The Hearing Officer must rule on the request, and if allowed, issue a new hearing date.

B. Advancement

A hearing may be held earlier than the assigned date when the parties jointly request advancement and notify the Hearing Officer in writing that the resolution session either has been waived or has been completed without resolution before expiration of the thirty (30) day time line for the resolution session.

C. Advisory Opinion Process

1. The Request

One or both parties may submit a Request for an Advisory Opinion to the BSEA. The Advisory Opinion Process is voluntary, and therefore, consent of *both* parties is necessary in order to access the process. In order to commence the Advisory Opinion Process, a Request for an Advisory Opinion may be submitted either simultaneously with or after a Request for Hearing. A Request for an Advisory Opinion shall automatically constitute a request for a thirty (30) day postponement of any previously scheduled hearing date.

2. Processing of the Request

Upon receipt of a joint Request for an Advisory Opinion, or upon receipt of a non-requesting party's agreement to participate in the process, the BSEA shall simultaneously: (a) assign a Hearing Officer and schedule a date for the Advisory Opinion; and (b) schedule a Hearing date for a full hearing on the merits thirty (30) days subsequent to the Advisory Opinion date, with a different Hearing Officer.

3. Exchange of Documents and Identification of Witnesses

Unless otherwise agreed by the parties and the Hearing Officer, each party must exchange copies of documents and the names of no more than two (2) witnesses no later than five (5) business days prior to the date of the Advisory Opinion Process. Only a limited number of essential documents should be submitted for the Advisory Opinion Process. Each party must simultaneously provide copies of the documents and witness list to the BSEA.

4. Procedure

The following procedures apply to the conduct of the Advisory Opinion process:

- a. The witnesses' testimony shall not be under oath;
- b. The proceeding shall not be recorded;
- c. Information exchanged during the Advisory Opinion Process shall not be used for impeachment of witnesses at any subsequent hearings or proceedings associated with the case. All Hearing Officer Advisory Opinions shall be confidential and shall not be disclosed to the public or at any further hearings or proceedings associated with the case;
- d. Unless other timelines are agreed to by the parties and the Hearing Officer, each party shall be allocated a total of one (1) hour to present their respective cases.
- e. The Hearing Officer shall render a brief written Advisory Opinion.

Unless otherwise agreed by the parties, the Advisory Opinion is not binding on the parties.

Once the Advisory Opinion has been completed, the party who requested the hearing will be expected to inform the Hearing Officer in writing of the intention to proceed to hearing on the scheduled hearing date or to withdraw the hearing request.

Taking A Hearing Off Calendar

RULE IV: *Off Calendar*

A. Defined

The parties have the option of taking a hearing off calendar, but only by written agreement of the parties. Off calendar means: all parties agree that (a) the case shall remain open but that new hearing dates will not be scheduled until requested by one of the parties or required by the Hearing Officer; and (b) the timeline for issuing a final decision is extended by the number of days the matter is off calendar, plus an additional twenty (20) calendar days to provide time for the matter to be rescheduled for hearing. A hearing that is off calendar will be returned to the calendar and assigned specific dates for hearing upon the receipt of a written request from any party.

B. Periodic Review

Three months from the date on which the parties agreed to have the case taken off calendar, the parties will be notified via an Order to Show Cause that the case will be dismissed without prejudice unless the BSEA is informed that the case is still active.

If in response to the Order to Show Cause the parties indicate that the case is still active, yet they wish to have the case remain off calendar, the Hearing Officer may either: 1) extend the off calendar status for a period of time not to exceed three months; 2) schedule a hearing date and require the parties to go forward; or 3) dismiss the matter without prejudice. Six months after a case has been taken off calendar, the BSEA will schedule a hearing date and the parties shall proceed to hearing or the matter may be dismissed with prejudice.

The Prehearing Conference

RULE V: *Prehearing Conference*

A. Hearing Request Prerequisite

A prehearing conference may be conducted only after a request for hearing has been filed with the BSEA and the parties have either completed or waived the resolution session.

Absent extraordinary circumstances, a prehearing conference shall not delay the hearing date unless a party requests or assents to a postponement for the purpose of scheduling a prehearing conference.

B. Purpose of Prehearing Conference

The prehearing conference shall clarify or simplify the issues as well as review the possibility of settlement of the case. At the prehearing conference, the parties shall be prepared to discuss their respective positions and the relief each seeks through the hearing. Not every case will require a prehearing conference. If the issues are clear, a case may proceed directly to hearing.

A prehearing conference may address:

- clarification of issues;
- remedies;
- identification of areas of agreement and disagreement;
- discovery;
- date for exchange of exhibits;
- length of hearing;
- need for an interpreter and/or stenographer;
- settlement;
- prehearing conference orders; and/or
- organization of the proceedings.

Participants in a prehearing conference must have full authority to settle the case or have immediate access to such authorization.

C. When Both Parties Request a Prehearing Conference

A Hearing Officer shall conduct such a prehearing conference upon joint request of the parties once the parties have either completed or waived the resolution session.

D. When One Party or Neither Party Requests a Prehearing Conference

When one party or neither party requests a prehearing conference, a Hearing Officer shall determine whether a prehearing conference is necessary.

If the Hearing Officer determines that a prehearing conference is necessary, the conference may be scheduled, but shall not delay the hearing date.

If neither party requests a prehearing conference, the Hearing Officer may not unilaterally convert a hearing into a prehearing conference.

A prehearing conference may also be held immediately prior to convening the hearing.

E. Failure to Appear at a Prehearing Conference

If a party fails to appear for a prehearing conference, a Hearing Officer may proceed with the conference and may also entertain a dismissal or default against the absent party by issuing a ten (10) day Order to Show Cause.

F. Telephonic Prehearing Conference

A party may request that a prehearing conference be conducted by telephone.

Exchange of Information, Motions, Subpoenas, Exhibits

RULE VI: *Informal/Formal Exchange of Information*

A. Exchange of Information by Agreement

The parties are encouraged to exchange information cooperatively and by agreement prior to the hearing. The parents are entitled to receive copies of the student's school records. (*See Massachusetts Student Record Regulations, 603 CMR 23.00.*)

B. Discovery

The term "discovery" refers to formal requests for, and exchanges of, information. Unless the case has been granted expedited status, formal requests for information

may be made at any time after a request for hearing is filed and the resolution meeting, when required, has been held or waived. Discovery may occur in the form of written questions (interrogatories), written requests for records (production of documents), or testimony under oath taken outside of a hearing (deposition).

The party upon whom the request is served shall respond within a period of thirty (30) calendar days unless a shorter or longer period of time is established by the Hearing Officer.

1. *Requests for Documents.* Any party may request any other party to produce or make available for inspection or copying any documents or tangible things not privileged, not supplied previously, and which are in the possession, custody, or control of the party upon whom the request is made.
(A party may request documents from a non-party through a subpoena duces tecum duly issued by the Bureau of Special Education Appeals, and those documents may be delivered to the office of the party requesting the documents prior to the hearing date. See Rule VIII B.)
2. *Interrogatories.* A party may serve on any other party written interrogatories for the purpose of discovering relevant, not privileged, information not supplied previously through a voluntary exchange of information. Hearing Officer approval is not required for twenty-five (25) or fewer interrogatories. No party, without Hearing Officer approval, shall serve more than twenty-five (25) interrogatories on another party. For purposes of determining the number of interrogatories, subparts of a basic interrogatory that are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection must be stated in lieu of an answer.
3. *Depositions.* In order to take the testimony of any witness by deposition, a party must file a written motion seeking approval from the Hearing Officer.
 - a. Time & Content. There shall be at least ten (10) calendar days notice to the parties of the motion to take a deposition. A motion requesting a deposition shall state the name and address of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and address of the person before whom the deposition will take place, and the reason why such deposition should be taken.
 - b. Authorization. The Hearing Officer shall allow the motion only upon a showing that the parties have agreed to submit the deposition in lieu of testimony by the witness or the witness to be deposed cannot appear before the Hearing Officer without substantial hardship, and that the testimony being sought is relevant and material, not privileged, and not discoverable by an alternate means.
 - c. Scope and Conduct of the Deposition. Depositions shall be taken orally before a person having power to administer oaths. Every witness testifying upon

deposition shall be duly sworn, and the adverse party (ies) shall have the right to cross-examine. Objections to questions must set out the grounds relied upon. The testimony shall be reduced to writing and shall, unless waived, be signed by the witness, and certified by the officer before whom the deposition is taken. After the deposition has been subscribed and certified, it shall be forwarded to the Hearing Officer. Subject to appropriate rulings on objections, and the parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the proceeding.

C. Objections/Protective Orders

The party upon whom a request for discovery is served may, within ten (10) calendar days of service of the request, file with the Hearing Officer objections to the request or move for a protective order. Disputes regarding discovery shall be resolved whenever possible by conference call. Protective orders may be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer. Orders of the Hearing Officer may include limitations on the scope, method, time and place for discovery or provisions protecting confidential information.

RULE VII: *Motions*

A. Motion Defined

A party may request that a Hearing Officer issue an order or take any action consistent with relevant statutes or regulations. Such a request shall be called a motion.

B. Filing a Motion

After a party files a hearing request, motions may be filed in writing with the Hearing Officer. Each motion shall set forth the reasons for the desired order or action and shall also state whether a hearing on the motion is requested.

C. Notice of the Motion to the Other Party

Written motions must be served on all parties and the Hearing Officer simultaneously. The party (ies) filing the motion must submit a signed statement that he/she has sent a copy of the motion to the opposing party (ies). The statement must indicate the method (e.g., fax, mail, hand-delivery) by which the copy was sent. Any party may file written objections to the allowance of the motion and may request a hearing on the motion within seven (7) calendar days after a written motion is filed with the Hearing Officer and the opposing party, unless the Hearing Officer determines that a shorter or longer time is warranted.

D. Hearings and Rulings on a Motion

If a hearing on a motion is warranted, a Hearing Officer shall give all parties at least three (3) calendar days notice of the time and place for hearing. A Hearing Officer may rule on a motion without holding a hearing if: delay would seriously injure a

party; testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved; or a ruling without a hearing would best serve the public interest.

E. Evidence Relating to a Motion

In support of, or opposition to, a motion, a party may offer only evidence relevant to the particular motion. This evidence may consist of facts that are supported by affidavit (a sworn, written statement under oath), appear in records, files, depositions, or answers to interrogatories, or presented by sworn testimony.

RULE VIII: *Subpoenas*

A. Subpoena Defined

A subpoena is a written command to appear at a certain time and place to give testimony in the case. A subpoena may also require the production of documents. This is called a subpoena *duces tecum*.

B. Issuance

Upon the written request of a party, the BSEA shall issue a subpoena to require a person to appear and testify and, if requested, to produce documents at the hearing. A party may also request that the subpoena *duces tecum* direct that documents subpoenaed from a non-party be delivered to the office of the party requesting the documents prior to the hearing date.

The request, which must be simultaneously sent to the opposing party and the Hearing Officer, must be received by the Hearing Officer at least ten (10) calendar days prior to the hearing; shall specify the name and address of the person to be subpoenaed; and shall describe any documents to be produced. Subpoenas may be issued independent of the BSEA and shall be governed by the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01(10)(g). The BSEA may also issue a subpoena *sua sponte*, that is, on its own initiative without a formal request from a party.

C. When a Person Contests a Subpoena

A person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena. A Hearing Officer may so do upon a finding that the testimony or documents sought are not relevant to any matter in question or that the time or place specified for compliance or the breadth of the material sought imposes an undue burden on the person subpoenaed.

D. Enforcement

If any person fails to comply with a properly issued subpoena, the party requesting the issuance of the subpoena may petition the Superior Court for an order requiring compliance with the terms of the subpoena.

RULE IX: Exhibits, Witness List**A. Five Day Rule**

Copies of all documents to be introduced (exhibits) and a list of the witnesses to be called at the hearing must be received by the opposing party (ies) and the Hearing Officer at least five (5) business days prior to the hearing unless otherwise allowed by the Hearing Officer.

B. Exhibit Preparation

All exhibits shall be numbered in the upper right hand corner, divided by tabs, and submitted to the Hearing Officer along with a numbered index. Use of loose leaf or other binders is encouraged.

How a Hearing Is Conducted

RULE X: Conduct of Hearing**A. Generally**

To the extent possible, hearings shall be scheduled at a time and place convenient to the parties. Hearings shall be as informal as is reasonable and appropriate under the circumstances. The Hearing Officer has the authority and obligation to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner. Unless the parents request otherwise, the hearing is closed to the public, and all evidence taken at hearing shall remain confidential.

B. Hearing Officer Duties and Powers

The Hearing Officer shall have the duty to conduct a fair hearing; administer the oath or affirmation to witnesses testifying at the hearing; to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; and to reach a fair, independent, and impartial decision based on the issues and evidence presented at the hearing and in accordance with the law. In furtherance of these duties, the Hearing Officer may:

1. Authorize the BSEA to issue subpoenas *sua sponte* or upon the request of any party to secure the presentation of evidence or testimony;
2. Request a statement of the issues and define the issues;

3. Rule on any requests or motions that may be made during the course of the due process proceedings;
4. After consultation with the parties and consideration of the proposed evidence, place reasonable limits on the presentation of evidence to prevent undue delay, waste of time, or needless presentation of cumulative evidence;
5. Assist all those present in making a full statement of the facts in order to bring out all the information necessary to decide the issues involved and to ascertain the rights of the parties;
6. Ensure that each party has a full opportunity to present its case orally, or in writing, and to secure witnesses and evidence to establish its claims;
7. Regulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensible record of the proceedings;
8. Examine witnesses and ensure that relevant evidence is secured and introduced;
9. Receive, rule on, or exclude evidence;
10. Introduce into the record any regulations, statutes, memoranda, or other materials relevant to the issues at the hearing;
11. Continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other information;
12. Order additional evaluations at public expense;
13. Order written briefs to be submitted by the parties, establish the issues to be addressed by the briefs, and set the deadline for their submission;
14. Reconvene the hearing at any time prior to the issuance of a decision for any purpose or pursuant to a post-hearing motion; and
15. Censure, reprimand, or otherwise ensure that all participants conduct themselves in an appropriate manner.

C. Evidence

The Hearing Officer shall not be bound by the rules of evidence applicable to courts, but shall observe the rules of privilege recognized by law. Evidence shall be admitted only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

1. *Documents.* The parties may offer as evidence documents that they have exchanged prior to the hearing in accordance with these rules. At the hearing, the Hearing Officer may permit or request the introduction of additional documentary evidence where no prejudice would result to either party.

2. *Oral Testimony.* Oral testimony shall be given under oath or affirmation, subject to the pains and penalties of perjury. Witnesses shall be available for examination and cross-examination.
3. *Regulations and Statutes.* Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the pertinent regulation or statute.
4. *Stipulations.* Stipulations of fact, or stipulations as to the testimony that would have been given by an absent witness, may be used as evidence at the hearing. The Hearing Officer may require evidence in addition to the stipulations offered by the parties.
5. *Administrative Notice.* The Hearing Officer may take administrative notice of any fact of which judicial notice could be taken, and in addition may take administrative notice of statutes, regulations, and general, technical or scientific facts within the specialized knowledge of the Hearing Officer. Parties shall be notified of the facts so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the record.
6. *Additional Evidence.* The Hearing Officer may require any party to submit additional evidence on any relevant matter.

D. Evidentiary Standard

In reaching a decision, a Hearing Officer will assess the weight, credibility, and probative value of the evidence admitted into the record. Hearing Officers may use their experience, technical competence, and specialized knowledge in evaluating the evidence. The Hearing Officer's decision will be based upon a preponderance of the evidence presented.

E. Close of the Hearing

At the conclusion of all testimony, the Hearing Officer has the discretion to permit or require the parties to make oral or written closing arguments. A request to submit written closing arguments shall constitute a postponement request which must be documented and acted upon in accordance with Rule III above. If the Hearing Officer allows the submission of written closing arguments, they shall be submitted no later than seven (7) business days after the last day of hearing unless the parties jointly request, and the Hearing Officer allows, a different time period provided, however, that in no case shall written closing arguments be filed more than thirty (30) calendar days after the last day of hearing. The Hearing Officer has the discretion to limit the number of pages and font size of the written arguments.

The record is formally closed when additional submissions permitted by the Hearing Officer, (i.e. documents; written closing arguments), if any, are received by the Hearing Officer, or upon the date such documents or arguments are due, whichever comes first. A decision will be issued within twenty-five (25) calendar days after the close of the record.

F. Failure to Prosecute or Defend

If a party fails to file documents required by statute or regulation, to respond to notices or correspondence, to comply with orders of the Hearing Officer, to appear at the scheduled hearing or otherwise indicates an intention not to continue with prosecution of the claim, the Hearing Officer may dismiss the case with or without prejudice through a ten (10) day Order to Show Cause, or may take evidence and issue such orders as may be necessary including, but not limited to, ordering an educational program or placement for the student.

RULE XI: *Rights of Parties***A. Rights of All Parties**

Under the provisions governing BSEA hearings, all parties shall have the right:

1. To receive from the BSEA, upon request, a list of its impartial Hearing Officers with their qualifications;
2. To be accompanied and advised by legal counsel and /or an advocate;
3. To present written documents;
4. To compel the attendance of witnesses pursuant to a subpoena;
5. To examine and cross-examine witnesses;
6. To request that the Hearing Officer prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) business days before the hearing;
7. To obtain a certified written transcription of the entire proceeding by a certified court reporter and/or an electronic verbatim record of the hearing, free of charge, upon written request to the BSEA. Either may only be used in a manner consistent with these Rules and otherwise shall be kept confidential except with the parent's consent;
8. To receive a written or, at the option of the parents, an electronic decision setting forth the Hearing Officer's findings of fact and order, within the federally and state mandated timeline, provided that the Hearing Officer may grant reasonable extensions of time at the request of either party.

B. Parent Rights

Under the provisions governing the BSEA hearings, parents have the following additional rights:

1. To have the student, who is the subject of the hearing, present at the hearing;
2. To open the hearing to the public;
3. Pursuant to the Massachusetts Student Records Regulations, to inspect and to receive a copy of all student records pertaining to the student, including school records and papers related to the identification, evaluation, placement, or provision of a free appropriate public education to the student.

Hearing Decision

RULE XII: *Decision Without A Hearing*

A party may request a decision without a hearing

All parties must agree to a decision based solely on written material. The decision will have the same force and effect as any other BSEA decision.

RULE XIII: *Decision and Implementation of Decision*

A. Decision

The written findings of fact and decision of the Hearing Officer, along with the notification of the procedures to be followed with respect to appeal and enforcement of the decision, shall be sent to the parties and their representatives, if any.

B. Finality of Decision

The Hearing Officer's decision is the final decision of the BSEA and is not subject to further agency review. Motions to reconsider or to re-open a hearing once a decision has been issued are not permitted.

C. Immediate Implementation

Except as provided below in Rule XIV, the Hearing Officer's decision shall be implemented immediately.

RULE XIV: *Rights of Appeal; Placement of Student During Appeal; Stay of Decision***A. Rights of Appeal**

Any party aggrieved by the decision of the Hearing Officer may file a complaint for review of the decision in the state Superior Court or in Federal District Court no later than ninety (90) calendar days from the date of the decision of the Hearing Officer.

B. Placement of Student During Judicial Appeal of BSEA Decision

If the BSEA decision calls for a change of placement with which parent agrees, that placement must be implemented immediately. In all other situations, the student must remain in his or her current educational placement unless the school district and parents agree otherwise.

C. Stay of Decision

A party seeking to stay the Hearing Officer's decision must seek and obtain a stay from the court having jurisdiction over the party's appeal.

RULE XV: *Compliance with Decision*

A party contending that the Hearing Officer's decision is not being implemented may file a motion requesting the BSEA to order compliance with the decision.

The motion shall set out the specific areas of alleged non-compliance. The Hearing Officer may convene a hearing on the motion at which the scope of inquiry will be limited to facts bearing on the issue of compliance, facts of such nature to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief and/or refer the matter to the Legal Office of the Commonwealth of Massachusetts Department of Elementary and Secondary Education for enforcement.

RULE XVI: *Record*

Upon receipt of a written request from any party, the BSEA will arrange for and provide free of charge: 1) a certified written transcription of the entire proceedings by a certified court reporter or 2) an electronic verbatim record.

Dismissal/ Case Closure

RULE XVII: *Dismissal and Closure of Case*

A. Dismissal With and Without Prejudice Defined

A Hearing Officer may dismiss a case with prejudice or without prejudice. Dismissal with prejudice means that the issues litigated and/or raised in the hearing request are closed and cannot be reopened/relitigated in subsequent cases before the BSEA. Dismissal without prejudice means that the same issues may be litigated at a later date by the filing of a new request for hearing within the statutory time period.

B. By Request of a Party

Any party may file a motion or request to dismiss a case for:

1. lack of jurisdiction;
2. failure of the opposing party to prosecute or proceed with the case;
3. failure of the opposing party to follow or comply with the Rules or any Hearing officer order;
4. failure to state a claim upon which relief may be granted; or,
5. the clear failure of the opposing party to establish a viable claim for relief after presentation of its evidence.

The hearing officer may allow a motion or request to dismiss with or without prejudice.

C. By Order to Show Cause

A Hearing Officer may issue an order requiring that party to show cause why the case should not be dismissed if it is inactive or in the process of settlement. If that party fails to show such cause within the time period established by the Hearing Officer, not to exceed thirty (30) calendar days, the case may be dismissed with or without prejudice.

D. Inactive Cases

A case that has not been re-scheduled, withdrawn, or requested to be scheduled by either party for a period of one year from the original request for hearing, shall be dismissed with prejudice.

E. Withdrawal

The moving party may withdraw a request for hearing by filing a written withdrawal with the Hearing Officer and the opposing party. When received by the BSEA prior to the commencement of the hearing, the withdrawal automatically closes the case without prejudice, unless the parties and the Hearing Officer agree otherwise.

LEA Assignment Appeals

RULE XVIII: Appeals of Massachusetts Department of Elementary and Secondary Education Assignments of School District Responsibility

A. Hearing Request

In order to request a hearing before the BSEA appealing a Massachusetts Department of Elementary and Secondary Education assignment of school district responsibility, it is required that Mandated Form **28 M/8** be used.

B. Applicable BSEA Rules

Hearings conducted by the BSEA involving appeals of Massachusetts Department of Elementary and Secondary Education assignments of school district responsibility are governed by 603 CMR 28.10(9) and are not subject to the following BSEA Hearing Rules: I A-G; II C; III B; XIV A.

C. Right of Appeal

A party aggrieved by a Hearing Officer's decision regarding an appeal of a Massachusetts Department of Elementary and Secondary Education assignment of school district responsibility may file a complaint for review of the decision in state Superior Court pursuant to MGL c. 30A.



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**BARCLAYS OFFICIAL CALIFORNIA CODE OF
REGULATIONS
TITLE 1. GENERAL PROVISIONS
DIVISION 2. OFFICE OF ADMINISTRATIVE
HEARINGS
CHAPTER 1. GENERAL APA HEARING
PROCEDURES**

This database is current through 10/24/08, Register 2008,
No. 44

§ 1020. Motion for Continuance of Hearing.

(a) A Case filed with OAH is assigned to the Presiding Judge until reassigned to another ALJ.

(b) A Motion to continue a Hearing shall be in writing, directed to the Presiding Judge, and Served on all other parties.

(c) Before filing the Motion, the moving party shall make reasonable efforts to confer with all other parties to determine whether any party opposes the Motion and to obtain future dates when all parties are unavailable for Hearing over the next six months and at least three alternative preferred future Hearing dates.

(d) The Motion shall include all facts which support a showing of good cause to continue the Hearing, as well as:

- (1) the Case name, and OAH Case number;
- (2) the date, time and place of the Hearing;
- (3) the address and daytime telephone number of the moving party;
- (4) the name, address and telephone number of all other parties;
- (5) a list of all previous Motions to continue the Hearing and the dispositions thereof;
- (6) whether or not any party opposes the Motion;

(7) any future dates when the parties are unavailable for Hearing over the next six months and any preferred future Hearing dates obtained pursuant to paragraph (c);

(8) if the moving party has not included all of the information required pursuant to this paragraph (d), the reasons why it is not included;

(9) a reference to any legal or other requirement to set the Hearing within a certain period of time, and whether or not the parties have waived the requirement.

(e) If the Motion is not timely pursuant to section 11524(b) or other applicable law, the Motion shall include all facts justifying the lack of timeliness.

(f) The Motion may include a proposed order granting the continuance.

(g) Any party may request a written order from OAH reflecting the disposition of the Motion.

(h) Any party opposing the Motion shall file with OAH and Serve on all other parties a written opposition.

(i) The Presiding Judge may waive any requirement of this regulation, including but not limited to the requirement for a written Motion, written opposition, written order, and/or any notice to other parties.

(j) Regulation 1022 does not apply to Motions for continuance filed under this regulation.

<General Materials (GM) - References, Annotations, or Tables>

Note: Authority cited: Section 11370.5(b), Government Code. Reference: Section 11524, Government Code. Arnett v Office of Administrative Hearings, 49 Cal. App. 4th 332 (1996).

HISTORY

1. New section filed 6-30-97 as an interim regulation pursuant to Government Code section 11400.20; operative 7-1-97 (Register 97, No. 27). Interim regulations expire on 12-31-98 unless earlier repealed or amended.
2. Interim regulation, including amendment of section heading, section and Note, filed 5-19-98 as a permanent regulation pursuant to Government Code section 11400.20; operative 5-30-98 pursuant to Government Code section 11343.4(d) (Register 98, No. 21).
3. Repealer and new section filed 10-13-2004; operative 12-1-2004 (Register 2004, No. 42).

1 CCR § 1020, 1 CA ADC § 1020

ICAC

1 CA ADC § 1020
END OF DOCUMENT

◉ Formerly cited as CA ST PRETRIAL AND TRIAL Rule 375

West's Annotated California Codes Currentness

California Rules of Court (Refs & Annos)

Title 3. Civil Rules (Refs & Annos)

Division 11. Law and Motion (Refs & Annos)

Chapter 6. Particular Motions (Refs & Annos)

Article 2. Procedural Motions (Refs & Annos)

→ **Rule 3.1332. Motion or application for continuance of trial**

(a) Trial dates are firm

To ensure the prompt disposition of civil cases, the dates assigned for a trial are firm. All parties and their counsel must regard the date set for trial as certain.

(b) Motion or application

A party seeking a continuance of the date set for trial, whether contested or uncontested or stipulated to by the parties, must make the request for a continuance by a noticed motion or an ex parte application under the rules in chapter 4 of this division, with supporting declarations. The party must make the motion or application as soon as reasonably practical once the necessity for the continuance is discovered.

(c) Grounds for continuance

Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only on an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

- (1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;
- (2) The unavailability of a party because of death, illness, or other excusable circumstances;
- (3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;
- (4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;
- (5) The addition of a new party if:
 - (A) The new party has not had a reasonable opportunity to conduct discovery and prepare for trial; or
 - (B) The other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard

to the new party's involvement in the case;

(6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or

(7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.

(d) Other factors to be considered

In ruling on a motion or application for continuance, the court must consider all the facts and circumstances that are relevant to the determination. These may include:

(1) The proximity of the trial date;

(2) Whether there was any previous continuance, extension of time, or delay of trial due to any party;

(3) The length of the continuance requested;

(4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance;

(5) The prejudice that parties or witnesses will suffer as a result of the continuance;

(6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay;

(7) The court's calendar and the impact of granting a continuance on other pending trials;

(8) Whether trial counsel is engaged in another trial;

(9) Whether all parties have stipulated to a continuance;

(10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance; and

(11) Any other fact or circumstance relevant to the fair determination of the motion or application.

CREDIT(S)

(Formerly Rule 375, adopted, eff. Jan. 1, 1984. As amended, eff. Jan. 1, 1985; Jan. 1, 1995; Jan. 1, 2004. Renumbered Rule 3.1332 and amended, eff. Jan. 1, 2007.)

HISTORICAL NOTES

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The 1985 amendment inserted, in subd. (a), the first two sentences; rewrote the former fourth sentence [now the sixth sentence] which had read: "A continuance before or during trial shall not be granted except for an affirmative

showing of good cause.”; rewrote last sentence of subd. (a) which had read: “This rule shall not prevent cases from being dropped from the calendar by stipulation or order”; and rewrote subd. (b), which had read:

“(b) [Motions to advance or reset] Motions to advance, reset, or specially set cases for trial shall be made on notice to all other parties, and shall be presented to the judge supervising the master calendar or, in counties where there is no master calendar, to the judge in whose department the case is pending.”

The 1995 amendment, in subd. (a), in the third sentence, inserted “Unless the case has previously been assigned for all purposes to a specific judge or department”, inserted the fourth sentence relating to cases assigned to a specific judge or department, and in the eighth sentence, inserted “not subject to the Trial Court Delay Reduction Act”; and in subd. (b), in the first sentence, inserted “Unless the case has previously been assigned for all purposes to a specific judge or department”, and inserted the second sentence relating to cases assigned to a specific judge or department.

The Jan. 1, 2004 amendment rewrote the rule to incorporate provisions relating to continuances in the superior court formerly found in Standards of Judicial Administration, Section 9. Prior to amendment, Rule 375 had read:

“(a) [Motions and grounds for continuances] Continuances before or during trial in civil cases are disfavored. The date set for trial shall be firm. Unless the case has previously been assigned for all purposes to a specific judge or department, a motion for continuance before trial shall be made to the judge supervising the master calendar or, if there is no master calendar, to the judge in whose department the case is pending. If the case has been assigned for all purposes to a specific judge or department, the motion shall be made before the assigned judge or in the assigned department. Except for good cause, the motion shall be made on written notice to all other parties. The notice shall be given and motion made promptly on the necessity for the continuance being ascertained. A continuance before or during trial shall not be granted except on an affirmative showing of good cause under the standards recommended in section 9 of the Standards of Judicial Administration. This rule shall not prevent cases not subject to the Trial Court Delay Reduction Act from being removed from the civil active list as provided in rule 223.

“(b) [Motions to advance or reset] Unless the case has previously been assigned for all purposes to a specific judge or department, motions to advance, reset, or specially set cases for trial shall be made before the presiding judge or the presiding judge's designee. If the case has been assigned for all purposes to a specific judge or department, the motion shall be made before the assigned judge or in the assigned department. A motion to advance, reset, or specially set a case for trial shall not be granted, except on notice, the filing of a declaration showing good cause, and the appearance by the moving party at the hearing on the motion.”

The Jan. 1, 2007 amendment, adopted June 30, 2006 as part of the reorganization of the California Rules of Court, renumbered this rule, and in subd. (b), substituted “the rules in chapter 4 of this division” for “rule 379”; and made nonsubstantive changes.

For disposition and derivation tables relating to the 2007 reorganization of the California Rules of Court, see tables at the front of this volume. (If using an electronic publication, see Refs & Annos (References, Annotations, or Tables).)

Derivation: Former Rule 224, adopted eff. Jan. 1, 1949.

Former Rule 225, adopted eff. Jan. 1, 1949.

Former Rule 512, adopted eff. July 1, 1999.

Former Rule 513, formerly Rule 512, adopted eff. Jan. 1, 1994, renumbered Rule 512 eff. July 1, 1999.

CROSS REFERENCES

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2 California Affirmative Defenses 2d § 28:23, Normal Time for Place on Trial Calendar.

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Rutter, Cal. Practice Guide: Civ. Pro. Before Trial Ch. 12(I)-F, F. Motions to Continue Trial.

Rutter, Cal. Practice Guide: Civil Trials & Evidence Ch. 1-K, K. Continuance Motions.

Rutter, Cal. Practice Guide: Civil Trials & Evidence Ch. 1-L, L. Assignment to Trial Department.

Rutter, Cal. Practice Guide: Civil Trials & Evidence Ch. 12-D, D. Other Motions During Trial.

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Rutter, Cal. Practice Guide: Landlord-Tenant Ch. 9-A, A. Trial Setting.

Rutter, Cal. Practice Guide: Personal Injury Ch. 8-A, A. Case Management Under "Fast Track".

Rutter, Cal. Practice Guide: Personal Injury Ch. 9-A, A. Assignment to Trial.

7 Witkin Cal. Proc. 4th Trial § 8, (S 8) Limitations.

7 Witkin Cal. Proc. 4th Trial § 9, (S 9) Standards of Judicial Administration.

7 Witkin Cal. Proc. 4th Trial § 13, (S 13) Unavailability of Attorney.

7 Witkin Cal. Proc. 4th Trial § 14, (S 14) Substitution of Attorney.

7 Witkin Cal. Proc. 4th Trial § 16, When Continuance Will be Granted.

7 Witkin Cal. Proc. 4th Trial § 18, (S 18) Absence of Evidence.

7 Witkin Cal. Proc. 4th Trial § 19, Death, Illness, or Unavailability.

7 Witkin Cal. Proc. 4th Trial § 24, (S 24) Surprise at Trial.

7 Witkin Cal. Proc. 4th Trial § 25, (S 25) Amendment of Pleadings.

7 Witkin Cal. Proc. 4th Trial § 32, (S 32) Motion.

7 Witkin Cal. Proc. 4th Trial § 33, (S 33) Affidavits and Deposition.

Younger on California Motions § 25:2, Legal Bases--Court Rules.

Younger on California Motions § 25:23, Formal Notice Rare.

Younger on California Motions § 25:26, Moving Papers--Points and Authorities.

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1. Construction and application

Liberality should be exercised in granting continuances when they are not prejudicial to other parties. Capital Nat. Bank of Sacramento v. Smith (App. 3 Dist. 1944) 62 Cal.App.2d 328, 144 P.2d 665. Pretrial Procedure ¶711

Liberality should be exercised in granting postponements of trials to obtain presence of material evidence and to prevent miscarriages of justice. Canal Oil Co. v. National Oil Co. (App. 3 Dist. 1937) 19 Cal.App.2d 524, 66 P.2d 197. Pretrial Procedure ¶717.1

Courts are disposed to show great liberality in granting continuances in civil cases, when it fairly appears that to do otherwise would deny applicant his day in court. Ross v. Thirlwall (App. 4 Dist. 1929) 101 Cal.App. 411, 281 P. 714. Pretrial Procedure ¶711

A party is entitled to have a cause tried at the date for which it is set, unless some satisfactory reason is presented for its postponement. Manha v. Union Fertilizer Co. (1907) 151 Cal. 581, 91 P. 393. Pretrial Procedure ¶724

2. Construction with other laws

Trial court abused its discretion in denying plaintiffs' motion for ex parte order to shorten time to hear motion for early trial date where plaintiffs brought the motion in order to avoid effect of C.C.P. § 583 requiring dismissal of case for failure to bring it to trial within five years of filing. Campanella v. Takaoka (App. 2 Dist. 1984) 206 Cal.Rptr. 745, 160 Cal.App.3d 504. Trial ¶5

3. Public policy

Decisions as to requests for a continuance must be made in an atmosphere of substantial justice, and the strong public policy favoring disposition of a case on the merits outweighs the competing policy favoring judicial efficiency. Oliveros v. County of Los Angeles (App. 2 Dist. 2004) 16 Cal.Rptr.3d 638, 120 Cal.App.4th 1389. Pretrial Procedure ¶713

Delay reduction and calendar management are required to promote the just resolution of cases on their merits, and thus trial court decisions about whether to grant a continuance or extend discovery must be made in an atmosphere of substantial justice; when the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency. Hernandez v. Superior Court (App. 2 Dist. 2004) 9 Cal.Rptr.3d 821, 115 Cal.App.4th 1242, as modified. Pretrial Procedure ¶25; Pretrial Procedure ¶713

4. Discretion of court--In general

Rulings on a motion for continuance rests almost entirely in the trial court's discretion. Corbin v. Howard (1923) 61 Cal.App. 715, 215 P. 920; Flynn v. Fink (1923) 60 Cal.App. 670, 213 P. 716.

Granting or refusing continuance is discretionary with trial court. Vallera v. Vallera (1946) 73 Cal.App.2d 466, 166 P.2d 893; Ferrari v. Mambretti (1945) 70 Cal.App.2d 492, 161 P.2d 275; Foster v. Hudson (1939) 33 Cal.App.2d 705, 92 P.2d 959; In re McCarthy's Estate (1937) 23 Cal.App.2d 395, 73 P.2d 913; Bailey v. Pacific Greyhound Lines (1937) 20 Cal.App.2d 372, 66 P.2d 1246; Berger v. Mantle (1937) 18 Cal.App.2d 245, 63 P.2d 335; Berk v. Equitable Life Assur. Soc. of U.S. (1936) 7 Cal.2d 544, 61 P.2d 762; Callegari v. Maurer (1935) 4 Cal.App.2d 178, 40 P.2d 883; Forney v. Brodie (1935) 3 Cal.App.2d 245, 39 P.2d 516; Bank of America Nat. Trust & Savings Ass'n v. Harriscolor Films (1934) 220 Cal. 383, 31 P.2d 189; Bullard v. Rosenberg (1933) 130 Cal.App. 542, 20 P.2d 104; Southwestern Creditors' Ass'n v. Garvey (1932) 128 Cal.App. 28, 16 P.2d 796; Spadoni v. Maggenti (1932) 121

Cal.App. 147, 8 P.2d 874; Carl v. Thomas (1931) 116 Cal.App. 294, 2 P.2d 872; Ross v. Thirlwall (1929) 101 Cal.App. 411, 281 P. 714; Clinton v. Yates (1928) 88 Cal.App. 281, 263 P. 383; Marcucci v. Vowinckle (1913) 164 Cal. 693, 130 P. 430; Sheldon v. Landwehr (1911) 159 Cal. 778, 116 P. 44; Pilot Rock Creek Canal Co. v. Chapman (1858) 11 Cal. 161.

A motion for continuance is addressed to the sound discretion of the trial court. Oliveros v. County of Los Angeles (App. 2 Dist. 2004) 16 Cal.Rptr.3d 638, 120 Cal.App.4th 1389. Pretrial Procedure 713

The term "judicial discretion" implies the absence of arbitrary determination, capricious disposition, or whimsical thinking, and imports the exercise of discriminating judgment within the bounds of reason, and thus, for a court to exercise the power of judicial discretion, all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent, and just decision. Hernandez v. Superior Court (App. 2 Dist. 2004) 9 Cal.Rptr.3d 821, 115 Cal.App.4th 1242, as modified. Courts 26

While it is true that a trial judge must have control of the courtroom and its calendar and must have discretion to deny a request for a continuance when there is no good cause for granting one, it is equally true that, absent a lack of diligence or other abusive circumstances, a request for a continuance supported by a showing of good cause usually ought to be granted. Hernandez v. Superior Court (App. 2 Dist. 2004) 9 Cal.Rptr.3d 821, 115 Cal.App.4th 1242, as modified. Pretrial Procedure 713

Motion for continuance rests to a great extent in sound discretion of trial court. Schwartz v. Magyar House, Inc. (App. 1959) 168 Cal.App.2d 182, 335 P.2d 487. Pretrial Procedure 713

Generally, courts are liberal in granting continuances, but an application for a continuance is addressed to sound discretion of trial court. In re McCarthy's Estate (App. 4 Dist. 1937) 23 Cal.App.2d 389, 73 P.2d 910. Pretrial Procedure 713

Discretion of trial court on motion for continuance may not be arbitrarily exercised. Eckert v. Graham (App. 1 Dist. 1933) 131 Cal.App. 718, 22 P.2d 44. Pretrial Procedure 713

5. --- Denial, discretion of court

Denial of further continuances in wrongful termination action brought by employee, who had been deemed a vexatious litigant, to allow employee to obtain new counsel after her previous counsel had withdrawn from the case, was not an abuse of discretion; the serious illness of one trial witness necessitated the need to proceed with the case, in addition to the fact that the record failed to establish that employee's efforts to retain substituted counsel were sufficiently diligent. Forrest v. State Of California Dept. Of Corporations (App. 2 Dist. 2007) 58 Cal.Rptr.3d 466, 150 Cal.App.4th 183. Pretrial Procedure 726

In medical malpractice action against county, the trial court abused its discretion in denying request by county's counsel for continuance due to schedule conflict, where the case was complicated involving 18 expert witnesses, there were no other qualified attorneys available in counsel's firm, counsel had been diligent, and court denied request without considering all the relevant facts and circumstances, but only took into account the impact of a continuance on the court's calendar, unguided by the strong public policy in favor of deciding cases on the merits. Oliveros v. County of Los Angeles (App. 2 Dist. 2004) 16 Cal.Rptr.3d 638, 120 Cal.App.4th 1389. Pretrial Procedure 716

Denial of continuance request stipulated to in writing by both parties in dental malpractice action and submitted four days before scheduled date of trial was not abuse of discretion; stipulation stated that parties were agreeing to a

continuance with court's permission, and continuance request, made for purpose of extending time for deposing witnesses, came at relatively late date. Pham v. Nguyen (App. 4 Dist. 1997) 62 Cal.Rptr.2d 422, 54 Cal.App.4th 11. Stipulations ⚡14(11)

Even if attorney had been an attorney of record and a written stipulation had been offered for postponement of trial, denial of continuance motion would still have been within discretion of trial judge, since, despite its mandatory language, C.C.P. § 595.2 authorizing postponement upon stipulation of attorneys of record is directory only. San Bernardino County v. Doria Min. & Engineering Corp. (App. 4 Dist. 1977) 140 Cal.Rptr. 383, 72 Cal.App.3d 776. Stipulations ⚡3

Denial of continuance of action to foreclose mortgage was not abuse of discretion where at time of trial plaintiff's attorney contended that he had informed defendant's attorney that he might make application to trial court and that plaintiff's attorney would not oppose application, and motion for continuance was denied after hearing both parties. Meier v. Hayes (App. 1 Dist. 1937) 20 Cal.App.2d 451, 67 P.2d 120. Pretrial Procedure ⚡713

Refusal of continuance after other judge had denied continuance on same grounds was not abuse of discretion under circumstances. Mission Film Corp. v. Chadwick Pictures Corp. (1929) 207 Cal. 386, 278 P. 855. Pretrial Procedure ⚡726

6. Duty of court

Trial judge must assert his power and vigorously insist upon cases being heard and determined with as great promptness as the exigencies of the case will permit. San Bernardino County v. Doria Min. & Engineering Corp. (App. 4 Dist. 1977) 140 Cal.Rptr. 383, 72 Cal.App.3d 776; In re Dargie's Estate (1939) 33 Cal.App.2d 148, 91 P.2d 126.

Because of necessity for orderly, prompt and effective disposition of litigation and loss and hardship to parties to an action, as well as to witnesses therein, it is a part of bounden duty of trial judge, in absence of some weighty reason to contrary, to insist upon cases being heard and determined with as great promptness as exigencies of the case will permit. Kalmus v. Kalmus (App. 1951) 103 Cal.App.2d 405, 230 P.2d 57, certiorari denied 72 S.Ct. 292, 342 U.S. 903, 96 L.Ed. 676. Pretrial Procedure ⚡711

7. Grounds for continuance, generally

Continuances should not be used as dilatory tactic, and good cause for granting them should be present. Pham v. Nguyen (App. 4 Dist. 1997) 62 Cal.Rptr.2d 422, 54 Cal.App.4th 11. Pretrial Procedure ⚡711

On motion for continuance, trial judge could properly consider that case had been pending for over four years, that motion was not supported by written declarations, that neither an officer of defendant corporation nor defendant's attorney of record appeared and that motion was made on very day set for trial while plaintiff county had brought a witness and was ready to proceed. San Bernardino County v. Doria Min. & Engineering Corp. (App. 4 Dist. 1977) 140 Cal.Rptr. 383, 72 Cal.App.3d 776. Pretrial Procedure ⚡724

Granting of a continuance is not a matter of right. Moshos v. General Cas. Co. of America (App. 2 Dist. 1963) 31 Cal.Rptr. 17, 216 Cal.App.2d 425. Pretrial Procedure ⚡712

On motion for a continuance, the trial court determines only the sufficiency of the showing in support of the motion. White v. Rurup (App. 1948) 88 Cal.App.2d 692, 199 P.2d 451. Pretrial Procedure ⚡725

Unless continuance is asked new trial for accident or surprise is properly denied. Bradbury Estate Co. v. Carroll (App. 1 Dist. 1929) 98 Cal.App. 145, 276 P. 394. New Trial ⚡97

A continuance need not be moved for at the time of the surprise. Rodriguez v. Comstock (1864) 24 Cal. 85. New Trial ⚡97

8. Absence of evidence--In general

In personal injury and wrongful death action brought against city and county on ground that police officers negligently decided to give high-speed chase of fleeing vehicle, ending in a collision between the fleeing vehicle and plaintiffs' vehicle, the trial court did not abuse its discretion in denying a continuance and thereby excluding expert testimony on the standards of good police practice in hot pursuit chases since the police used their siren and since plaintiffs' claims of negligence rested solely on the police officers' decision to pursue. Bratt v. City and County of San Francisco (App. 1 Dist. 1975) 123 Cal.Rptr. 774, 50 Cal.App.3d 550. Pretrial Procedure ⚡717.1

Where, for purpose of showing fraudulent intent of debtors in making certain transfers, plaintiff introduced evidence of other transfers made by debtors of other assets to other persons, denying debtors' request for continuance sought for purpose of enabling them to gather and present evidence meeting plaintiff's evidence regarding other transfers was not error. Everts v. Sunset Farms (1937) 9 Cal.2d 691, 72 P.2d 543. Pretrial Procedure ⚡717.1

Refusal of a continuance to enable defendant to procure testimony to rebut an issue raised by amendment to the complaint was not error, where such evidence would come from defendant himself. Smith v. Murphy (1914) 168 Cal. 328, 143 P. 594. Pretrial Procedure ⚡720

Where the complaint in an action on a note alleges the place where demand of payment on behalf of the deceased maker was made, but not the person to whom demand was delivered, defendant, on proof of the person being made, being without evidence to meet it and desiring time therefor, should ask for a continuance. Kinsel v. Ballou (1907) 151 Cal. 754, 91 P. 620. Bills And Notes ⚡469

9. ---- Materiality, absence of evidence

A motion for continuance on ground of absence of evidence may be denied where affidavits in support of motion do not allege facts showing the materiality of the testimony sought to be produced. Jennings v. American President Lines (1943) 61 Cal.App.2d 417, 143 P.2d 349, rehearing denied 61 Cal.App.2d 417, 144 P.2d 54. Pretrial Procedure ⚡724

No abuse of discretion appears in denying motion for continuance in absence of clear showing that material evidence exists and that it will be available within a reasonable time if continuance is granted. Everts v. Will S. Fawcett Co. (App. 1934) 3 Cal.App.2d 261, 38 P.2d 868. Pretrial Procedure ⚡724

Under C.C.P. § 595, providing that defendants are not entitled to postponement of trial for taking testimony of a party, except on a showing of the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it, in suit to quiet title, defendant in his pleadings having asserted that plaintiff was a mythical person, and making no showing of merit by his affidavit or any claim that plaintiff's testimony was necessary and material to defendants, the court properly refused to order a commission to take plaintiff's testimony, application for which was made, noticed and heard the day after that set for trial. Cobe v. Crane (1916) 173 Cal. 116, 159 P. 587.

Where defendant was surprised at plaintiffs' evidence as to the doing of certain assessment work on mining claims in controversy, it was no excuse for defendant's failure to ask a continuance in order to procure proof to the contrary

that he expected the judge of the court to visit the mine before rendering his decision. Miller v. Scoble (App. 1908) 8 Cal.App. 344, 97 P. 93. New Trial 97

The discovery that a receipt on which defendant's defense was based had been mutilated is sufficient ground for a continuance, even after the testimony and argument are heard, and the court has announced orally his finding. Hastings v. Hastings (1866) 31 Cal. 95, 1 P.L.M. 77, PT. 2. Pretrial Procedure 714

When a party discovers material testimony before the trial, but too late to procure it, he should apply for a continuance. Berry v. Metzler (1857) 7 Cal. 418. Pretrial Procedure 717.1

10. ---- Discovery, absence of evidence

In action by investment company on basis of alleged negligence and breach of contract by accounting firm, trial court did not abuse its discretion in denying continuance to allow investment company, which apparently made no effort to discover evidence on issue of damages with which to oppose accounting firm's motion for summary adjudication of the issue, and which did not indicate what additional evidence it expected to discover if continuance were granted, to conduct further discovery regarding damages allegedly sustained when as the result of accounting firm's negligence and breach of contract, investment company failed to discover that certain securities were worthless or virtually worthless until time at which it was too late for company to protect the investments. Vanderbilt Growth Fund, Inc. v. Superior Court of Los Angeles County (App. 2 Dist. 1980) 164 Cal.Rptr. 621, 105 Cal.App.3d 628. Pretrial Procedure 717.1

Denial of defendant's motion for continuance in order to have sufficient time within which to complete discovery proceedings was not abuse of discretion, in absence of showing that defendants made any effort, between time of filing complaint and date of trial, for any discovery proceedings. Windiate v. Moore (App. 5 Dist. 1962) 19 Cal.Rptr. 860, 201 Cal.App.2d 509. Pretrial Procedure 714

The continuance of a trial, merely upon assertion of one of parties that she might be able to discover evidence favorable to her, must be left to discretion of trial court, and appellate courts will not interfere with exercise of such discretion except upon a clear showing that it has been abused. Johnston v. Johnston (App. 1 Dist. 1941) 48 Cal.App.2d 23, 119 P.2d 158. Appeal And Error 969; Pretrial Procedure 717.1; Trial 26

Where defendant presented no affidavit or other proof in support of his motion for a continuance to take depositions, the record did not disclose the names of the desired deponents or the facts to which they would testify, and there was no showing as to why their depositions were not taken before trial, the motion was properly denied under this section. Bassi v. Walden (App. 3 Dist. 1923) 64 Cal.App. 764, 222 P. 866. Pretrial Procedure 724

A continuance for the procurement of testimony will not be granted where the affidavit does not show that due diligence to procure the testimony has been exercised. Leszinsky v. White (1873) 45 Cal. 278. Pretrial Procedure 724

A continuance will not be granted to allow the party applying for it time to take a deposition, if the testimony when obtained would constitute no defense to the action. Hawley, Stirling & Co. v. Stirling (1852) 2 Cal. 470. Pretrial Procedure 717.1

11. ---- Availability, absence of evidence

In action to establish paternity of child, wherein plaintiff's "surprise" witness testified that he had seen defendant in act of sexual intercourse with plaintiff, court did not abuse its discretion in refusing defendant's request for a

continuance in order to secure from military authorities records to show that the witness had allegedly suffered a court-martial conviction, and to show that witness was allegedly afflicted mentally, and that he was allegedly addicted to the use of morphine. Rose v. Tandowsky (App. 2 Dist. 1947) 80 Cal.App.2d 927, 183 P.2d 347. Children Out-of-wedlock ¶55

Where defendant's affidavit for continuance on ground that principal witness was sick and that chief counsel for defendant was engaged in another matter was contradicted by evidence that chief witness had been seen about city, and defendant was represented by other able counsel, denial of continuance was not error, especially in absence of a showing that evidence admittedly necessary to establish defense and to obtain which continuance had been refused, would be available at any time. Everts v. Will S. Fawcett Co. (App. 1934) 3 Cal.App.2d 261, 38 P.2d 868. Pretrial Procedure ¶724

Where plaintiff's bookkeeper produced paper which was excluded because not account of original entry, refusal to continue such portion of plaintiff's case pending taking of evidence on other points, so as to permit plaintiff to procure original account book, which could have been produced by 2 o'clock on same afternoon, was an abuse of discretion. Luse v. Peters (1933) 219 Cal. 625, 28 P.2d 357. Pretrial Procedure ¶717.1

Where judgment is unavailable as evidence because of pending appeal in case in which judgment was rendered party desiring benefit of evidence should move for a continuance until judgment becomes available for that purpose. Smith v. Smith (1901) 134 Cal. 117, 66 P. 81. Pretrial Procedure ¶714

In an action to quiet title to land, defendant moved for a continuance until he could obtain certified copies of papers in a certain United States land office, stating that the register was dead and the office vacant, that he needed the papers as evidence, and that he could not get them till a new register qualified; but no affidavit in support of the motion was presented, nor was there a statement as to what papers defendant wished to obtain, or what he expected to prove by them, or when the register died, or that defendant could not have obtained them before trial, the motion was properly denied. Stewart v. Sutherland (1892) 93 Cal. 270, 28 P. 947. Pretrial Procedure ¶724

12. --- Omission, absence of evidence

A continuance will be granted for the absence of evidence only when proper legal means to obtain it have been used, or it is shown to the satisfaction of the court that such means would have been ineffectual. Inadvertently omitting to produce evidence in possession of the party himself is insufficient. Kuhland v. Sedgwick (1860) 17 Cal. 123. Pretrial Procedure ¶718

13. --- Cumulative evidence, absence of evidence

Refusal to permit suspension of proceedings during trial to obtain and offer cumulative evidence was not error, suspension of proceedings during trial being matter of discretion. Weddington v. McCann (App. 2 Dist. 1930) 104 Cal.App. 474, 285 P. 1052. Pretrial Procedure ¶717.1

14. Absence of counsel--In general

Death of attorney for police officer did not make bringing parents' action to trial within five years "impracticable," and thus statute tolling time limit to bring case to trial did not apply in parents' action alleging wrongful death, violations of civil rights, and negligent hiring, training, and supervision against city and police officers who were allegedly involved in shooting of parents' child, since inadequate oversight by parents' counsel, not attorney's death, led to failure to timely bring action to trial, attorney's death did not result in situation over which parents had no control, and there was ample time after court selected trial date that violated five-year period for parents to file

motion to specially set matter for trial. Sanchez v. City of Los Angeles (App. 2 Dist. 2003) 135 Cal.Rptr.2d 869, 109 Cal.App.4th 1262, rehearing denied, review denied. Pretrial Procedure ⚡595

Proceeding to trial in absence of defendant or his attorney, if within the discretion of the trial court, was an abuse of such discretion. McMunn v. Lehrke (App. 1915) 29 Cal.App. 298, 155 P. 473. Appeal And Error ⚡969

Where ten days before the day set for the trial a motion for a continuance was made on the ground that the partner of defendants' attorney was necessarily absent as a congressman, but in another affidavit defendants' attorney stated that he had had full charge of the litigation on defendants' behalf since his firm became associated and connected therewith, a denial of the continuance was not an abuse of the trial court's discretion. In re Kasson's Estate (1903) 141 Cal. 33, 74 P. 436.

Where an attorney for defendant states that he is a witness, and requests an adjournment until afternoon, to secure the presence of his associate counsel, who was detained by sickness in his family, the cause will not be reversed for a refusal to grant such request, where it is not shown that all defenses were not fully presented. Peachy v. Witter (1901) 131 Cal. 316, 63 P. 468. Pretrial Procedure ⚡716

15. ---- Financial need, absence of counsel

In patient's malpractice action against physician, trial court did not coerce physician into representing himself at trial where physician did not inform court that he was without funds for attorney until day set for trial, no motion for continuance was made and good cause for granting continuance did not exist, physician made no offer of proof or affirmative showing of his financial situation, and physician was of at least ordinary intelligence and minimally familiar with court procedure. Nelson v. Gaunt (App. 1 Dist. 1981) 178 Cal.Rptr. 167, 125 Cal.App.3d 623. Attorney And Client ⚡62

16. ---- Illness, absence of counsel

Personal injury plaintiff was entitled to continuance of trial date and extension of discovery for supplementation of expert witness list; plaintiff's attorney sought continuance of initial trial date due to his pancreatic cancer, then died five days after initial trial date, plaintiff quickly retained new attorney who had scheduling conflict, original attorney had not designated expert witness on liability issues, whereas defendant had designated expert on such issues, and plaintiff required spinal surgery during time set for trial. Hernandez v. Superior Court (App. 2 Dist. 2004) 9 Cal.Rptr.3d 821, 115 Cal.App.4th 1242, as modified. Pretrial Procedure ⚡25; Pretrial Procedure ⚡717.1

In eminent domain action, trial court did not abuse its discretion in denying defendant's motion for a continuance on ground an appraiser for defendant had become unable to act because of a sudden injury, in view of fact that such appraiser was not employed by defendant until one week before trial, and in view of fact defendant had three qualified realty appraisers who testified in her behalf at the trial, and in view of fact affidavit in support of the motion failed to set forth exact nature of the testimony sought to be produced by the appraiser. Orange County Water Dist. v. Bennett (App. 1958) 156 Cal.App.2d 745, 320 P.2d 536. Pretrial Procedure ⚡717.1; Pretrial Procedure ⚡724

Where record disclosed that defendant's attorney was stricken with heart attack, 20 days before date case was originally set for trial, which prevented him from doing any trial work for 90 days, and when case was called for trial, facts concerning such illness were presented by affidavit of attorney having same business address as defendant's attorney who conducted case on behalf of defendant in an orderly and able manner, there was no abuse of court's discretion in denying motion for a continuance. Volkering v. Allen (App. 2 Dist. 1950) 96 Cal.App.2d 804, 216 P.2d 552. Appeal And Error ⚡966(2)

Where case was tried by member of law firm who had signed complaint and presumably had knowledge of facts at time he drew pleading, and member of firm for whose illness continuance was requested attended trial and appeared as witness and plaintiff was well represented and case was competently tried, refusal of continuance on ground of illness of counsel was not an abuse of discretion. Commercial Lumber Co. v. Ukiah Lumber Mills (App. 1 Dist. 1949) 94 Cal.App.2d 215, 210 P.2d 276. Pretrial Procedure 716

Setting quiet title action for trial notwithstanding request for continuance on ground that defendant's attorney was not in fit condition to prepare and try case and defendant had not succeeded in securing other counsel was not abuse of discretion, where trial had twice before been postponed on the same grounds. Litchfield v. Marin County (App. 1 Dist. 1948) 83 Cal.App.2d 730, 189 P.2d 750. Pretrial Procedure 726

17. ---- Other appearances, absence of counsel

Trial court abused its discretion in taking case off calendar and removing it from civil active list for failure of plaintiff's counsel to be present in court at time matter was ready for assignment; matter had been continued a number of times for legitimate reasons, counsel was required to present oral argument to Court of Appeal at relevant time, and counsel had not been informed that taking trial off calendar might be sanction for her nonappearance. Hernandez v. Superior Court (Fatemi) (App. 4 Dist. 1985) 215 Cal.Rptr. 755, 169 Cal.App.3d 1169. Trial 14

Where hearing was scheduled for full day in court, and where some counsel remained to participate in the hearing on behalf of defendant, trial court did not err in refusing to grant a continuance when one of defendant's counsel had to leave in midhearing for an appearance in another case. Joint Holdings & Trading Co., Ltd. v. First Union Nat. Bank of North Carolina (App. 2 Dist. 1975) 123 Cal.Rptr. 519, 50 Cal.App.3d 159. Pretrial Procedure 716

18. ---- Familiarity with case, absence of counsel

Where defendant, on second trial in criminal prosecution, received seven volumes of transcript of previous trial in week before trial started, and received remaining five volumes a few minutes before selection of jury was undertaken, and trial court refused a continuance unless defendant would accept public defender as counsel, rather than the separate counsel he claimed, defendant was denied adequate time to prepare for trial. People v. Kerfoot (App. 2 Dist. 1960) 7 Cal.Rptr. 674, 184 Cal.App.2d 622. Criminal Law 577

A continuance is properly refused on ground that two of defendant's counsel were employed shortly before case was to be tried and were unfamiliar with the action where it was shown that one of counsel was employed the day before case was to be tried and that other counsel had represented defendant from commencement of the action and was present at the trial and took an active part in the proceedings. Fejer v. Paonessa (App. 2 Dist. 1951) 104 Cal.App.2d 190, 231 P.2d 507. Pretrial Procedure 721

19. ---- Substitution of attorneys, absence of counsel

On the record, trial court did not abuse its discretion in denying defendant's motion for continuance made on trial date and based on substitution of attorneys. San Bernardino County v. Doria Min. & Engineering Corp. (App. 4 Dist. 1977) 140 Cal.Rptr. 383, 72 Cal.App.3d 776. Pretrial Procedure 721

Where counsel appointed to represent defendant and codefendant appeared at arraignment and asked for a week's continuance and for appointment of other counsel and request was denied and no representation was made to court or at subsequent appearances in court in connection with setting trial date that there was any objection to counsel's representation of defendant and codefendant or that there was any conflict of interest in their respective defenses and

there was no request for postponement of trial date as set to obtain independent counsel, and a few days before trial date defendant and codefendant informed counsel that they no longer wanted him to represent them, and at commencement of trial counsel advised court of such situation, and asked to be relieved of responsibility, defendant waived right to counsel and was not deprived of his constitutional right to counsel. People v. Ingle (1960) 2 Cal.Rptr. 14, 53 Cal.2d 407, 348 P.2d 577, certiorari denied 81 S.Ct. 79, 364 U.S. 841, 5 L.Ed.2d 65. Criminal Law  1752

In action to rescind contract whereby plaintiff purchased from individual defendant a half interest in sewer business owned by such defendant, trial court did not abuse its discretion in denying motion for continuance made on morning case was called for trial to enable substituted attorney to prepare for trial and plaintiff suffered no prejudice as result thereof when case was continued for trial until following morning and after three days of trial case was continued for a week and original attorney actively participated in trial. Gardner v. Simpkins (App. 1958) 159 Cal.App.2d 798, 324 P.2d 740. Pretrial Procedure  715

Where case first came on for trial on February 20, 1950 and at that time was continued until 22nd of June following and immediately following order granting continuance plaintiff's counsel served notice of time and place for trial and on June 21st, defendant employed different attorney to represent him and on June 22nd attorney so employed appeared and filed affidavit asking for continuance on ground that he had not had time to prepare for trial, and in his application for continuance, plaintiff made no showing of his inability to secure any witnesses or any desired testimony, order refusing continuance was not prejudicial to rights of defendant and did not prevent defendant from presenting any evidence material to issues. Consolidated Pipe Co. v. Gries (App. 4 Dist. 1951) 103 Cal.App.2d 901, 230 P.2d 385. Appeal And Error  966(1)

Where plaintiff had written and oral notice of trial more than two months prior to trial date, advanced no justification by affidavit or otherwise for postponement of trial, and was present at trial, plaintiff was not entitled to continuance so that new attorney could make preparations, notwithstanding fact that eight attorneys had previously refused to represent plaintiff. Maynard v. Bullis (App. 1950) 99 Cal.App.2d 805, 222 P.2d 685. Pretrial Procedure  721

Parties have no absolute right to a continuance merely because of an unexplained change of counsel immediately preceding time set for hearing of cause, and refusal of continuance in such a case is not an abuse of discretion, in absence of some further showing. In re Dargie's Estate (App. 1939) 33 Cal.App.2d 148, 91 P.2d 126. Pretrial Procedure  721

20. ---- Withdrawal, absence of counsel

Where attorney withdraws from case on Friday before Monday morning of trial, client ordinarily does not have sufficient time to procure substitute counsel, and unless client actually had sufficient advance warnings that his attorney intended to withdraw, circumstances justify granting continuance. Vann v. Shilleh (App. 2 Dist. 1975) 126 Cal.Rptr. 401, 54 Cal.App.3d 192. Pretrial Procedure  716

Where 10 months elapsed between date answer was filed and trial date of action for attorney's fee and on day of trial motion of one attorney for defendant to withdraw was granted but other attorney continued to represent defendant, denial of motion for continuance was not an abuse of discretion. White v. Rurup (App. 1948) 88 Cal.App.2d 692, 199 P.2d 451. Pretrial Procedure  716

Refusal to grant proponents of alleged lost or destroyed will a continuance on hearing of contest because proponents were not represented by counsel was not an abuse of discretion where application for continuance was not supported by affidavit or in any other manner, and proponent, who had filed petition to probate the alleged lost or destroyed will, had been served with notice of withdrawal by his attorneys on May 19th and hearing was on June 12th

following. In re McCarthy's Estate (App. 4 Dist. 1937) 23 Cal.App.2d 395, 73 P.2d 913. Wills ¶319

21. Absence of parties--In general

Unavoidable absence of a party does not necessarily compel a court to grant a continuance, but court should be governed by the course which seems most likely to accomplish substantial justice, and may take into consideration the legal sufficiency of the showing in support of motion and good faith of moving party. Whalen v. Superior Court In and For Los Angeles County (App. 2 Dist. 1960) 7 Cal.Rptr. 610, 184 Cal.App.2d 598; McElroy v. McElroy (1948) 32 Cal.2d 828, 198 P.2d 683.

The inability of a party to attend on the court does not ipso facto require granting of application for a continuance particularly where showing justifies conclusion that injustice will be as likely to follow from granting of continuance as from its refusal. Miller v. Miller (1945) 26 Cal.2d 119, 156 P.2d 931; Johnson v. Johnson (App. 1 Dist. 1943) 59 Cal.App.2d 375, 139 P.2d 33.

The unavoidable absence of a party does not necessarily compel the court to grant a continuance. Connor v. Jackson (App. 1 Dist. 1949) 94 Cal.App.2d 462, 210 P.2d 897. Pretrial Procedure ¶715

The right of a litigant to be present to defend or prosecute an action is not absolute. Thorpe v. Thorpe (App. 1946) 75 Cal.App.2d 605, 171 P.2d 126. Trial ¶21

In action for value of plaintiff's services to decedent, though there was no counter showing against plaintiff's motion for continuance due to inability to leave nursery business to attend trial, judge could consider that action had been pending for 3 1/2 years, that plaintiff could not be a witness, that case had been tried once before, that plaintiff would be in city of forum, etc. Ferrari v. Mambretti (App. 1 Dist. 1945) 70 Cal.App.2d 492, 161 P.2d 275. Pretrial Procedure ¶715

Refusal of arbitrators to continue hearing to compel the attendance of a party to the arbitration, or the taking of his deposition, was not erroneous, where it did not appear that any showing was made before the arbitrators by affidavit or under oath of the materiality of any evidence expected to be given by such witness or of any diligence used to procure his attendance, or that any request for time to prepare or present any such affidavit was made. In re Moore (App. 1 Dist. 1942) 51 Cal.App.2d 386, 124 P.2d 900. Alternative Dispute Resolution ¶263

Application for continuance for absence of defendant, not showing necessity of defendant's presence, or when he might be expected to appear, or what would be proved, was properly denied. Ross v. Thirlwall (App. 4 Dist. 1929) 101 Cal.App. 411, 281 P. 714. Pretrial Procedure ¶724

22. ---- Appearance by attorney, absence of parties

Where plaintiff's attorney was present in court when court ordered continuance, it was immaterial whether client was personally present at the civil proceeding as the appearance by attorney was sufficient. Taylor v. Bell (App. 2 Dist. 1971) 98 Cal.Rptr. 855, 21 Cal.App.3d 1002, certiorari denied 92 S.Ct. 2493, 408 U.S. 923, 33 L.Ed.2d 334. Trial ¶21

23. ---- Depositions, absence of parties

Where plaintiff said or did nothing to mislead defendants as to what he would testify, and a defendant knowing the facts was present, and not sworn, denial of a continuance to take a codefendant's deposition, to obtain his version of a conversation testified to by plaintiff was in the court's discretion, and will not be disturbed. Hodgkins v. Dunham

(App. 1909) 10 Cal.App. 690, 103 P. 351. Appeal And Error 966(2); Pretrial Procedure 714

24. --- Stipulations, absence of parties

Refusing second continuance because of defendant's absence was not error, plaintiff stipulating that defendant would testify to matters stated in affidavit. Gates v. McPherson (App. 2 Dist. 1933) 129 Cal.App. 473, 18 P.2d 980. Pretrial Procedure 722

25. --- Illness, absence of parties

Illness, even of a party, does not mandate continuance where trial court concludes the party is able to attend trial. Lewis v. Neptune Soc. Corp. (App. 1 Dist. 1987) 240 Cal.Rptr. 656, 195 Cal.App.3d 427. Pretrial Procedure 715

Trial court did not abuse its discretion in refusing to grant continuance in dissolution of marriage action, despite husband's claim of illness; record did not contain letter of husband's physician, and there was no explanation for his counsel's lack of diligence in preparing for emergency which could reasonably be anticipated for husband's type of illness. In re Marriage of Teggarden (App. 1 Dist. 1986) 226 Cal.Rptr. 417, 181 Cal.App.3d 401. Divorce 145

Where plaintiff was up and about, and his attorney evidently could confer with him, trial court did not abuse its discretion in denying plaintiff a continuance on ground that plaintiff was suffering from an ulcer of the duodenum and was in no condition to appear in court. Williams v. Elliott (App. 1 Dist. 1954) 127 Cal.App.2d 357, 273 P.2d 953. Pretrial Procedure 715

Evidence failed to establish that trial court abused its discretion in holding that plaintiff in action for separate maintenance and dissolution of partnership was physically able to come to California from her home in Massachusetts for the trial and to participate therein, and to deny plaintiff a continuance upon ground of disabling illness. Kalmus v. Kalmus (App. 1951) 103 Cal.App.2d 405, 230 P.2d 57, certiorari denied 72 S.Ct. 292, 342 U.S. 903, 96 L.Ed. 676. Pretrial Procedure 724

In a proper case a continuance should be granted because of illness of a party or a member of his family, but in considering all such applications trial court should be governed by the course which seems most likely to accomplish substantial justice, and in seeking such a course, court may take into consideration the legal sufficiency of a showing in support of the motion and good faith of the moving party. Kalmus v. Kalmus (App. 1951) 103 Cal.App.2d 405, 230 P.2d 57, certiorari denied 72 S.Ct. 292, 342 U.S. 903, 96 L.Ed. 676. Pretrial Procedure 715

Where only showing made by defendant's counsel, in support of his motion for continuance, was counsel's unsworn statement that he had been informed that defendant had measles, statement was not sufficient. Taylor v. Gordon (App. 1951) 102 Cal.App.2d 233, 227 P.2d 64. Pretrial Procedure 724

The inability of a party because of illness to attend on the court does not require granting of an application for a continuance, particularly where showing justifies conclusion that injustice will be as likely to follow from granting continuance as from its refusal. Thorpe v. Thorpe (App. 1946) 75 Cal.App.2d 605, 171 P.2d 126. Pretrial Procedure 715

The refusal of continuance for party's absence because of illness was not error, where it did not appear that party was prejudiced, and no formal application for continuance was made. Capital Nat. Bank of Sacramento v. Smith (App. 3 Dist. 1944) 62 Cal.App.2d 328, 144 P.2d 665. Pretrial Procedure 715; Pretrial Procedure 723.1

Refusal of continuance sought on ground of telephone message and telegrams from defendant's indemnity company notifying defendant's attorney of defendant's illness and inability to make trip to place of trial was not abuse of discretion, where attorney received no direct communication from defendant or defendant's physician concerning illness. Callegari v. Maurer (App. 1935) 4 Cal.App.2d 178, 40 P.2d 883. Pretrial Procedure  715

Failure to grant continuance for illness of party, impairing her ability to testify, was not error, where no motion for continuance was made. Clinton v. Yates (App. 1 Dist. 1928) 88 Cal.App. 281, 263 P. 383. Pretrial Procedure  715

Granting or refusal of continuance because of illness of member of party's family will not be disturbed, unless discretion is abused. Lindsey v. Wright (App. 1 Dist. 1927) 84 Cal.App. 499, 258 P. 438. Appeal And Error  966(2)

26. ---- Out-of-state business, absence of parties

Refusal to grant plaintiff in personal injury action a two-week continuance so that he could attend orientation and training seminar in connection with new job was not abuse of discretion; plaintiff knew about trial date when he accepted position and should have regarded that date as definite court appointment that took precedence over all nonemergencies. Lazarus v. Titmus (App. 2 Dist. 1998) 75 Cal.Rptr.2d 676, 64 Cal.App.4th 1242. Pretrial Procedure  714

Where proceeding for foreclosure of deed of trust after default was called for trial and continued until that afternoon, and trustors' attorney then appeared and moved for continuance and, in support thereof, presented trustors' telegram to effect that they were detained in another state on loan and bankruptcy matters, but stated that trustors had been in his office the previous Friday and he was unable to persuade one of them to remain in state no legal cause was shown for continuance. Evarts v. Myers (App. 1952) 112 Cal.App.2d 210, 245 P.2d 1119. Pretrial Procedure  715

Trial court did not abuse its discretion in denying motion of plaintiff's counsel for a continuance so that he could confer with plaintiff who was in the military service, to see if plaintiff had any facts in rebuttal, where plaintiff's attorney had been fully advised by the pleadings of defendants' claims. Johndrow v. Thomas (1947) 31 Cal.2d 202, 187 P.2d 681. Armed Services  34.9(1); Pretrial Procedure  715

27. ---- Unavoidable absence, absence of parties

Trial court did not abuse its discretion in denying motion for a continuance on ground of unavoidable absence of defendant, where there was want of diligence in delaying motion until morning set for trial, affidavit in support of motion failed to show testimony, if any, to be expected from defendant, affidavits did not state any facts tending to support conclusion that it was impossible to try matter without attendance of defendant, and there was no showing that efforts were made to take defendant's deposition or any excuse for not doing so. Hurley v. Kazantzis (App. 1 Dist. 1947) 82 Cal.App.2d 378, 186 P.2d 434. Pretrial Procedure  723.1; Pretrial Procedure  724

Refusing continuance for defendant's involuntary absence where neither defendant nor his counsel were at fault was abuse of discretion. Carl v. Thomas (App. 1931) 116 Cal.App. 294, 2 P.2d 872. Pretrial Procedure  715

28. ---- Reinstatement, absence of parties

Corporation not permitted to defend action could make motion for continuance so that it could be reinstated and

thereafter participate in trial; but even if it were improper for such corporation to make any motion whatever, it would nevertheless have been permissible for trial court to grant continuance on its own motion, and corporation would not have been prohibited from merely informing court of reasons why court should so act. Schwartz v. Magyar House, Inc. (App. 1959) 168 Cal.App.2d 182, 335 P.2d 487. Corporations ⚡499; Pretrial Procedure ⚡723.1

29. ---- Withdrawal, absence of parties

An action cannot be continued by the court to decide conflicting claims of the defendants, after the plaintiffs have withdrawn. Ryan v. Tomlinson (1866) 31 Cal. 11. Courts ⚡30

30. ---- Prejudice, absence of parties

Liability insurer was not barred from claiming prejudice from absence of insured at trial of tort action against him on alleged theory that motion for continuance made on last trial date was inadequate and untimely constituting laches and estoppel on part of insurer particularly concerning notice to adverse party, where insurer's attorney could not have made an effective application for continuance due to his inability to assure court that insured would be present on a future specified date. Allstate Ins. Co. v. King (App. 1 Dist. 1967) 60 Cal.Rptr. 892, 252 Cal.App.2d 698. Insurance ⚡3208; Insurance ⚡3214

The granting of continuances over a period of several months at defendant's request was not prejudicial to plaintiffs because of length of time between presentation of their evidence and that of defendant, where affidavits showed that defendant was endeavoring to locate one of the plaintiffs, and that defendant failed to get any assistance from plaintiffs' counsel, from parents of plaintiff whom it was endeavoring to locate, or from other sources, since delay could not be charged to any fault of defendant. Winkie v. Turlock Irr. Dist. (App. 3 Dist. 1937) 24 Cal.App.2d 1, 74 P.2d 302. Appeal And Error ⚡966(2)

31. Absence of witnesses--In general

Where continuance had been obtained to try to persuade a witness to testify but counsel had been unsuccessful in persuading witness to do so, a further continuance would not be granted for the same purpose. Blankman v. Parsons (App. 1 Dist. 1925) 73 Cal.App. 218, 238 P. 728. Pretrial Procedure ⚡726

Showing for a continuance for absence of a witness was insufficient to render the denial of the application an abuse of discretion. Watson v. Columbia Basin Development Co. (App. 1913) 22 Cal.App. 556, 135 P. 511. Pretrial Procedure ⚡717.1

Court did not abuse its discretion in denying a continuance from 3:30 until the next day to permit plaintiff to procure the attendance of additional witnesses, where their names, residences, or probable testimony was not shown, or that diligence had been exercised. Marcucci v. Vowinckel (1913) 164 Cal. 693, 130 P. 430. Trial ⚡26

Where the findings of the trial court would have been the same if an absent witness had been present, and had testified, the refusal of a continuance on the ground of the absence of witness will not be disturbed. Reclamation Dist. No. 70 v. Sherman (App. 1909) 11 Cal.App. 399, 105 P. 277. Appeal And Error ⚡1043(7); Pretrial Procedure ⚡717.1

32. ---- Failure to subpoena, absence of witnesses

Refusal of a continuance to produce a rebuttal witness was not an abuse of discretion, where witness had not been

subpoenaed. Kramer v. Kramer (App. 2 Dist. 1961) 17 Cal.Rptr. 461, 197 Cal.App.2d 727. Pretrial Procedure 718

In passenger's action against owners and drivers of colliding automobiles, refusal to grant continuance to give passenger opportunity to bring in physician who, at request of owners and drivers, had performed physical examination on passenger, was an abuse of discretion in view of fact that owners and drivers had failed to call physician as witness. Hays v. Viscome (App. 1 Dist. 1953) 122 Cal.App.2d 135, 264 P.2d 173. Pretrial Procedure 718

33. ---- Failure to respect subpoena, absence of witnesses

Trial court's refusal to grant brief continuance, which was sought by attorney after he was unable to locate one medical witness, and learned that second medical witness was in Europe and would not be appearing, was an abuse of discretion; although it did not appear that an "emergency" prevented either doctor from appearing, their failure to respect subpoenas created situation which could not have been known or anticipated by attorney; moreover, attorney reasonably followed up on subpoenas and exercised due diligence. Jurado v. Toys 'R' Us, Inc. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 158, 12 Cal.App.4th 1615, review denied. Pretrial Procedure 717.1; Pretrial Procedure 718

That a material witness, living at a distance, whose deposition had not been taken because of his promise to attend, is absent, is no ground for continuance. Lightner v. Menzel (1868) 35 Cal. 452. Pretrial Procedure 718

34. ---- Stipulations, absence of witnesses

Refusing continuance was proper where deposition of witness, indisposed at time of trial, was taken under stipulation and read in open court. Eberly v. Egan (App. 1 Dist. 1927) 86 Cal.App. 439, 260 P. 893. Pretrial Procedure 717.1

35. ---- Availability, absence of witnesses

Denial of defendant's request for continuance in dental malpractice action due to unavailability of expert witness was not abuse of discretion, where request was made on day of trial and was predicated on trial court's taking the asserted unavailability on faith without any substantial explanation, and where there was no indication that expert was under subpoena. Pham v. Nguyen (App. 4 Dist. 1997) 62 Cal.Rptr.2d 422, 54 Cal.App.4th 11. Pretrial Procedure 717.1

In malpractice action, action of trial court in failing to grant plaintiffs' motion for continuance on ground of unavailability of its only expert medical witness was not abuse of discretion, where there was nothing in record to show that such witness would have been qualified as expert, that such witness had agreed to testify in case, or that his testimony, if offered, would be either relevant or material to issues involved. Johnson v. Fassett (App. 1955) 132 Cal.App.2d 871, 283 P.2d 281. Pretrial Procedure 725

Where wife's attorney proceeded to trial of husband's action for divorce and wife's cross-complaint in the belief there was sufficient corroborating evidence to establish wife's allegations and that son of parties would be available in time to corroborate his mother's testimony, court upon finding that corroborating evidence was lacking abused its discretion in refusing a two weeks' continuance until son should return and supply such evidence. Winkler v. Winkler (App. 4 Dist. 1942) 54 Cal.App.2d 398, 129 P.2d 43. Divorce 145

The refusal of a continuance so that the attendance of an absent witness who lived at a distance could be procured was error; both parties requesting the delay. Swayne & Hoyt v. Wells-Russell & Co. (1915) 169 Cal. 204, 146 P.

686. Pretrial Procedure  717.1

36. ---- Location unknown, absence of witnesses

Where material witness relied upon by plaintiffs was stationed at army camp but was transferred two days before trial to an undisclosed new post, plaintiffs would have been entitled to a reasonable continuance in order to locate witness upon making such request. Baker v. Berreman (App. 1 Dist. 1943) 61 Cal.App.2d 235, 142 P.2d 448. Pretrial Procedure  717.1

37. ---- Illness or injury, absence of witnesses

In action for breach of liquidated damages agreement in which purchaser of vacant lots agreed not to resell lots to specified third parties, trial court did not abuse its discretion in denying purchaser's motions for continuance based on fact that a third party was medically unavailable to testify, since motions were made only two days before trial despite fact that defendant had known for some time that third party would be unavailable, purchaser did not seek to preserve third party's testimony by deposition, and purchaser made no showing that testimony would have been material to enforceability of liquidated damages agreement. Zlotoff v. Tucker (App. 4 Dist. 1984) 201 Cal.Rptr. 692, 154 Cal.App.3d 988. Pretrial Procedure  718

Denial of continuance because of illness of witness regarding fraud was not error, evidence of fraud not being admissible. Greenlee v. Los Angeles Trust & Sav. Bank (1915) 171 Cal. 371, 153 P. 383. Pretrial Procedure  717.1

38. ---- Cumulative evidence, absence of witnesses

Trial court did not abuse its discretion in denying motion for continuance based on medical disability of witness, where witness' testimony was cumulative and important solely for credibility, and movant made no attempt to notify opposing party that witness would not appear. Lewis v. Neptune Soc. Corp. (App. 1 Dist. 1987) 240 Cal.Rptr. 656, 195 Cal.App.3d 427. Pretrial Procedure  717.1

Where plaintiffs in medical malpractice action made no formal request for continuance because of absence of second expert witness until after they rested and it became clear that their other expert witness' testimony was not standing up well, and absent witness was not expected to give new, innovative testimony but rather cumulative testimony, denial of continuance was not abuse of discretion. Cade v. Mid-City Hospital Corp. (App. 2 Dist. 1975) 119 Cal.Rptr. 571, 45 Cal.App.3d 589. Pretrial Procedure  717.1; Pretrial Procedure  723.1

Where defendants based application for a continuance and a motion for leave to take depositions on ground that a third party was out of state and defendant had been unable to locate him until two weeks prior to trial and on ground that such party's testimony was only available evidence of dealings between plaintiff and party regarding defendant's purchases, but evidence would merely have been cumulative, denial of motions was not error. Biedebach v. Charles (App. 2 Dist. 1950) 96 Cal.App.2d 250, 215 P.2d 114. Pretrial Procedure  717.1

Denial of continuance, asked by buyer, to secure absent witness to testify as to bad quality of hay purchased, was not error, where buyer had waived issue as to quality by letter to seller, especially where absent testimony would have been merely cumulative on disputed question of fact. Crocker-Huffman Land & Water Co. v. Goss (1928) 203 Cal. 233, 263 P. 802. Pretrial Procedure  717.1

Where it did not appear that the absent witness was the only witness who could have given evidence as to the matters for which his presence was desired, and it appeared that appellant was provided with the presence and

testimony of other witnesses as to such subject-matter, the denial of a continuance on account of the absence of such witness is not an abuse of discretion. McNett v. McNett (App. 1 Dist. 1919) 44 Cal.App. 778, 187 P. 447. Pretrial Procedure 717.1

The refusal of a continuance sought so as to permit the testimony of an absent witness to be procured, if error, was harmless, where another witness testified to the same facts without objection, though his testimony was merely hearsay and largely statements of what the absent witness had told him. In re Cowell's Estate (1913) 164 Cal. 636, 130 P. 209. Pretrial Procedure 717.1

39. ---- Impeachment, absence of witnesses

A continuance is properly refused if the testimony of the absent witness will only tend to impeach a witness of the adverse party. Rose v. Tandowsky (App. 2 Dist. 1947) 80 Cal.App.2d 927, 183 P.2d 347. Pretrial Procedure 717.1

40. ---- Materiality, absence of witnesses

There must be showing that facts expected to be proved by absent witness cannot otherwise be proved in order to authorize continuance because of witness' absence. Agnew v. Larson (App. 2 Dist. 1961) 17 Cal.Rptr. 538, 197 Cal.App.2d 444. Pretrial Procedure 717.1

Alleged error in denial of contestant's motion for continuance of will contest because of absence of witness was not reversible error where absent witness' affidavit offered on motion for new trial showed that her testimony would have been either of no value, or actually adverse to contestant. In re Lefranc's Estate (App. 1950) 95 Cal.App.2d 885, 214 P.2d 420. Wills 400

In husband's divorce action on ground of extreme cruelty, specifying that wife bore illegitimate child, where proposed evidence was material in that, if true, it would have indicated that wife was pregnant before husband who was in navy arrived home on leave, refusal of motion for continuance to enable husband to produce testimony by attending physician was abuse of discretion. Murr v. Murr (App. 1 Dist. 1948) 87 Cal.App.2d 511, 197 P.2d 369. Divorce 145

In action for value of plaintiff's services, it was not error to deny plaintiff's motion for continuance on ground that two nonresidents could not attend for two months, where their testimony would deal with only a small part of plaintiff's services, and there was no showing that they were the only witnesses who could testify to the facts. Ferrari v. Mambretti (App. 1 Dist. 1945) 70 Cal.App.2d 492, 161 P.2d 275. Pretrial Procedure 717.1

Where it was stipulated that the evidence of an absent witness might be introduced after other evidence, error, if any, in refusing a continuance for the continued absence of such witness was harmless, where his evidence would only create a further conflict as to whether defendant knew of the admitted fraud perpetrated on plaintiff by its agent. Patterson v. Almond City Land & Development Co. (App. 1919) 40 Cal.App. 285, 180 P. 823. Appeal And Error 1043(7)

It is not error to refuse a continuance for the purpose of securing an absent witness in the absence of showing that her testimony would have had any material bearing nor what the nature thereof would have been. Wilbur v. Everhardy (1917) 176 Cal. 142, 167 P. 861. Pretrial Procedure 717.1

A continuance founded upon the absence of witnesses will be properly refused, if the facts to be proved are not material to the issue in the cause. Harper v. Lamping (1867) 33 Cal. 641. Pretrial Procedure 717.1

Discovery that testimony is material, during the trial, too late to use it, may be ground for a continuance, but not for a new trial, except in case of surprise. Berry v. Metzler (1857) 7 Cal. 418. New Trial 91

41. ---- Prejudice, absence of witnesses

In the context of a motion for a continuance, the prejudice that parties might suffer as a result of the continuance may be shown by loss of material witnesses due to lapse of time. Forrest v. State Of California Dept. Of Corporations (App. 2 Dist. 2007) 58 Cal.Rptr.3d 466, 150 Cal.App.4th 183. Pretrial Procedure 717.1

In action to set aside land contract where the trial court made findings of several distinct misrepresentations by defendant, any one of which would have been sufficient to support judgment, some of which were alleged in the complaint before amendment, defendant was not prejudiced by denial of a continuance to secure witnesses to meet issues raised by such amendment. Kuck v. McConnell (App. 1918) 39 Cal.App. 266, 178 P. 533. Appeal And Error 1043(7)

42. Pending actions

Under C.C.P. § 597 that when plea of another action pending is made, trial court may proceed to try special issues or defenses and enter interlocutory judgment, and that no trial of issues shall be had until the "final determination" of such action, the "determination" presupposes that evidence be taken, weighed, and evaluated before a decision is made. Tuolumne Gold Dredging Corp. v. Walter W. Johnson Co., N.D.Cal.1945, 61 F.Supp. 62. Pleading 111.33; Abatement And Revival 17

Where vendor of chattels installed on mortgaged realty removed them, and, being conditionally sold by second sellers after assignees of second sellers of chattels instituted claim and delivery action against mortgagees, wherein court made findings adverse to mortgagees though judgment had not become final, mortgagees brought conversion action against vendor, court trying mortgagees' action committed no abuse of discretion in continuing action pending outcome of assignees' action. Margolis v. Superior Court In and For San Mateo County (App. 1957) 151 Cal.App.2d 333, 311 P.2d 167, rehearing denied 151 Cal.App.2d 333, 313 P.2d 29. Pretrial Procedure 714

Trial court did not abuse its discretion in denying plaintiff's motion for a continuance because of pendency of a Massachusetts action between the parties, where it appeared that plaintiff was the one who first chose the courts of California forum for determination of the litigation, and it was only after an adverse ruling was made in her attempt to secure relief sought on order to show cause and when confronted with a cross complaint for declaratory relief and injunction in the California action, that plaintiff filed the Massachusetts action, and especially where decision in Massachusetts action would not determine all issues in the California action. Kalmus v. Kalmus (App. 1951) 103 Cal.App.2d 405, 230 P.2d 57, certiorari denied 72 S.Ct. 292, 342 U.S. 903, 96 L.Ed. 676. Pretrial Procedure 714

There is no priority of jurisdiction between cases filed in same court and in same county, nor is there any conflict of jurisdiction between them. Daly v. White (App. 1950) 100 Cal.App.2d 22, 222 P.2d 950. Abatement And Revival 6

Where California court found that there was no satisfactory evidence to show that any issues in earlier action pending in Mexico between parties were identical with or similar to issues before California court, that it did not appear that issue of title to claims in dispute had been raised in Mexican action, or that decision of Court in Mexico was res judicata as to any issues in action in California, and that action could be as conveniently tried in California as in Mexico, California court did not abuse its discretion in denying motion for continuance because of pendency of

Mexican action. Pesquera Del Pacifico, S. De R.L. v. Superior Court in and for San Diego County (App. 1 Dist. 1949) 89 Cal.App.2d 738, 201 P.2d 553. Pretrial Procedure ¶714

A defendant, taking no steps in county court, wherein action was brought, to secure relief from prosecution of second action, brought therein by same plaintiff after transfer of first action, on defendant's motion for change of venue, to another county, court of which acquired jurisdiction of cause before filing of second action, was not entitled to writ of prohibition restraining county court from proceeding with second action, as defendant had plain, speedy, and adequate remedy in such court by plea in abatement of second action on ground of another action pending or by motion to dismiss second action. Hanrahan v. Superior Court in and for Merced County (App. 3 Dist. 1947) 81 Cal.App.2d 432, 184 P.2d 157. Prohibition ¶3(1)

Pendency of action in ejectment did not warrant judgment suspending proceedings in action in unlawful detainer involving the same parties and property until final determination of action in ejectment. Burnand v. Irigoyen (App. 2 Dist. 1943) 56 Cal.App.2d 624, 133 P.2d 3. Abatement And Revival ¶8(2)

Wife's action against Philippine corporation to recover dividends on capital stock of the corporation registered in wife's name until Philippine decrees had directed transfer thereof to husband, part of which dividends had been paid to husband and part impounded by corporation, did not involve internal affairs of a corporation so as to warrant continuance of action until termination of action subsequently commenced by husband in Philippine court to recover impounded dividends and establish his right to control and dispose of the capital stock. Perkins v. Benguet Consol. Min. Co. (App. 1 Dist. 1942) 55 Cal.App.2d 720, 132 P.2d 70, certiorari denied 63 S.Ct. 1435, 319 U.S. 774, 87 L.Ed. 1721, rehearing denied 64 S.Ct. 429, 320 U.S. 803, 88 L.Ed. 485.

Refusal to continue until appeal from other judgment was determined was harmless, in action for proceeds from sale of realty, where defendant held no property for plaintiff in excess of such other judgment. Hillwig v. Boyer (App. 3 Dist. 1928) 89 Cal.App. 314, 264 P. 556. Appeal And Error ¶1043(7)

Upon the issue of another action pending in the same court for the same cause of action, finding "that there was not at the time of the commencement of this action any other action pending in this court between the parties to this action for the same cause of action mentioned and contained in the cause of action set forth in the complaint in this action" was sufficient. Newman v. Bird (1882) 9 P.C.L.J. 331, 60 Cal. 372. Abatement And Revival ¶17

The pendency of an appeal in another case between the same parties is no ground for continuance. Dunphy v. Belden (1881) 7 P.C.L.J. 701, 57 Cal. 427. Action ¶69(1)

The pendency of a proceeding to condemn land for the use of a railroad is no defense to an action of ejectment against the railroad company. Coburn v. Pacific Lumber & Mill Co. (1873) 46 Cal. 31. Abatement And Revival ¶5; Ejectment ¶29

An action of ejectment is not abated by the fact that a prior action to quiet title to the same premises is pending, or in which the same facts are being litigated. Bolton v. Landers (1864) 27 Cal. 104. Abatement And Revival ¶5; Ejectment ¶29

43. Showing required--In general

In considering a request for a continuance, the court must look beyond the limited facts which cause a litigant to request a last-minute continuance and consider the degree of diligence in his or her efforts to bring the case to trial, including participating in earlier court hearings, conducting discovery, and preparing for trial. Oliveros v. County of Los Angeles (App. 2 Dist. 2004) 16 Cal.Rptr.3d 638, 120 Cal.App.4th 1389. Pretrial Procedure ¶723.1

Motion for continuance made before trial should not be granted absent affirmative showing of good cause as defined by standards of judicial administration in appendix to California Rules of Court. Jurado v. Toys 'R' Us, Inc. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 158, 12 Cal.App.4th 1615, review denied. Pretrial Procedure 724

Granting of continuances is not favored and party seeking continuance must make proper showing of good cause. Foster v. Civil Service Com'n of Los Angeles County (App. 2 Dist. 1983) 190 Cal.Rptr. 893, 142 Cal.App.3d 444. Pretrial Procedure 711; Pretrial Procedure 724

There is no policy of indulgence or liberality in favor of party seeking continuances; rather, such parties must make a proper showing of good cause in accordance with this rule. San Bernardino County v. Doria Min. & Engineering Corp. (App. 4 Dist. 1977) 140 Cal.Rptr. 383, 72 Cal.App.3d 776. Pretrial Procedure 712; Pretrial Procedure 724

Where party has had actual knowledge that his case is set for trial for certain time and appears at that time, he is not entitled to continuance in absence of showing that he has not had such knowledge long enough to enable him to properly prepare, and in each such case it is question for discretion of trial court. Maynard v. Bullis (App. 1950) 99 Cal.App.2d 805, 222 P.2d 685. Pretrial Procedure 713; Pretrial Procedure 721

Refusing continuance was not abuse of discretion, where plaintiff waited until last day to file action and thereafter did not serve summons on defendant, and after demurrer was overruled took no steps to limit defendant's time to answer, and though represented by counsel made no showing of any effort to prepare for trial, nor as to nature of plaintiff's alleged illness, length of time she had been ill, or probable duration thereof. Berger v. Mantle (App. 2 Dist. 1936) 18 Cal.App.2d 245, 63 P.2d 335. Pretrial Procedure 715

To warrant continuance as matter of right, reasonable showing must be made. Ross v. Thirlwall (App. 4 Dist. 1929) 101 Cal.App. 411, 281 P. 714. Pretrial Procedure 724

44. --- Affidavits and proof, showing required

Where defendants' counsel moved for continuance when case was called, but no affidavits were filed in support of motion, which was denied, case was tried without defendants, no evidence was introduced on their behalf, and judgment was entered for plaintiff, and where five months later defendants moved to vacate judgment and produced supporting affidavits that illness had prevented their appearance, denial of continuance was no abuse of discretion in absence of showing in support of application, and defendants were not entitled to have judgment vacated. Nahas v. Nahas (App. 1955) 135 Cal.App.2d 440, 287 P.2d 381. Judgment 143(15); Pretrial Procedure 724

An application for continuance should be supported by either affidavits or other valid proof satisfactorily showing necessity for presence of absent party or witness, fact that interest of party will suffer by his absence, and reasonable assurance that party may be present at a future specified date to which trial may be continued, and if postponement is sought to procure evidence of a party to action or other witness, due diligence and materiality of evidence must be shown by affidavits. Taylor v. Gordon (App. 1951) 102 Cal.App.2d 233, 227 P.2d 64. Pretrial Procedure 724

Refusal of application for continuance was not an abuse of discretion, where no affidavits were filed and no oral evidence was adduced in support of application, and no showing of prejudice because of refusal was shown. Capital Nat. Bank of Sacramento v. Smith (App. 3 Dist. 1944) 62 Cal.App.2d 328, 144 P.2d 665. Pretrial Procedure 724

45. Notice of continuance

The appearance of counsel for both parties on date prior to day on which case was actually set, at which time they sought and obtained continuance to a day certain, had the same effect as though they had actually appeared on the day of trial and obtained continuance at that time, and no further notice of the date of trial, written or oral, was necessary. City of San Diego v. Walton (App. 4 Dist. 1947) 80 Cal.App.2d 206, 181 P.2d 424. Pretrial Procedure 725; Trial 6(3)

After due notice of original date of trial, defendant's attorney had duty to exercise diligence to inform himself of subsequent continuances of the trial. Capital Nat. Bank of Sacramento v. Smith (App. 3 Dist. 1944) 62 Cal.App.2d 328, 144 P.2d 665. Trial 6(3)

46. Length of continuance

Trial court could reasonably conclude that, after a lengthy continuance to obtain evidence, further continuance was an unnecessary delay, despite the plaintiffs' contention that some evidence favorable to them might be developed in the course of federal administrative proceedings. Wiler v. Firestone Tire & Rubber Co. (App. 3 Dist. 1979) 157 Cal.Rptr. 248, 95 Cal.App.3d 621. Pretrial Procedure 726

Plaintiff, who diligently prosecutes his suit, is entitled to have trial within reasonable time, and policy that there shall be a disposition of causes on their merits is not served when party, who is without fault, is denied determination of his cause through repeated continuances granted to opposing party. Hansen v. Bernstein (App. 2 Dist. 1952) 110 Cal.App.2d 170, 242 P.2d 368. Pretrial Procedure 726; Trial 5

The granting of continuance to afternoon session, but not to the following morning after plaintiff rested her case and motions for nonsuit were allowed as to one defendant and denied as to the other defendant, was not abuse of discretion, where trial was concluded at afternoon session without further request for or evidence of need of continuance. Miller v. Dufau (App. 1946) 76 Cal.App.2d 183, 172 P.2d 580. Trial 26; Pretrial Procedure 713

If court may not refuse to exercise its jurisdiction, it may not accomplish the same result by an indefinite continuance. Leet v. Union Pac. R. Co. (1944) 25 Cal.2d 605, 155 P.2d 42, certiorari denied 65 S.Ct. 1403, 325 U.S. 866, 89 L.Ed. 1986. Pretrial Procedure 725

47. Estoppel

Where plaintiff possesses means to bring matter to trial before the expiration of five-year period by filing motion to specially set matter for trial, plaintiff's failure to bring such motion will preclude later claim of impossibility or impracticability. Sanchez v. City of Los Angeles (App. 2 Dist. 2003) 135 Cal.Rptr.2d 869, 109 Cal.App.4th 1262, rehearing denied, review denied. Pretrial Procedure 595

Defendant may not complain of continuance which was granted at his own request. McDonald v. Superior Court of Sierra County (App. 3 Dist. 1937) 18 Cal.App.2d 652, 64 P.2d 738. Appeal And Error 882(16)

Defendants, who did not ask for continuance on the ground of surprise, cannot afterwards complain that a trial amendment permitting the plaintiff to conform his complaint to the proof was allowed. Dieckmann v. Merkh (App. 1912) 20 Cal.App. 655, 130 P. 27. New Trial 97

48. Jurisdiction, generally

The jurisdiction to hear and determine a cause or proceeding involves the power to postpone for good cause the time of hearing, unless prohibited by positive law. Curtis v. Underwood (1894) 101 Cal. 661, 36 P. 110. Pretrial Procedure ↪723.1

49. Personal jurisdiction

An appearance to apply for a continuance of a matter pending before a court is just as general as though for the purpose of invoking the action of the court in any other matter. Zobel v. Zobel (1907) 151 Cal. 98, 90 P. 191. Appearance ↪9(5)

50. Mandamus

Where reviewing court had partially reversed judgment granting wife divorce on ground that needs of parties did not justify alimony award, husband was not entitled to writ of mandate to compel court to fix amount of permanent alimony without retrial, on claim that procedure for setting matters for retrial would cause hardship by delay. Hall v. Superior Court In and For Los Angeles County (1955) 45 Cal.2d 377, 289 P.2d 431. Mandamus ↪51

51. Standing

Litigant whose default had been taken was not entitled to notice of trial and had no standing to ask for continuance. Hanson v. Hanson (App. 1 Dist. 1960) 3 Cal.Rptr. 179, 178 Cal.App.2d 756. Judgment ↪113

52. Failure to set for trial

Dismissal of plaintiff's action for failure to obtain a trial setting within six months after filing remittitur was not error, even though opinion reversing denial of plaintiff's motion for preferential setting ordered "the action... set for trial," where plaintiff failed to make any application for trial setting; duty to apply for trial setting is imposed on plaintiff, who has obligation to pursue action within applicable statutory time limits. Greene v. Howmedica, Inc. (App. 2 Dist. 1993) 16 Cal.Rptr.2d 777, 13 Cal.App.4th 912, review denied. Pretrial Procedure ↪588

Assuming that time in arbitration, though it did not toll running of five-year period for bringing action to trial by operation of statutory tolling, nonetheless, qualified as a cause of some impracticability on the part of plaintiff to bring her case to trial during that time, there was nonetheless abuse of discretion on the part of the trial court in denying motion to dismiss filed nine months after arbitration award where denial of motion had effect of extending the five-year period even longer than it would have been extended if the statutory tolling had been applicable, and there was no showing of effort to utilize an early setting motion. Castorena v. Superior Court In and For Los Angeles County (App. 2 Dist. 1982) 186 Cal.Rptr. 14, 135 Cal.App.3d 1014. Pretrial Procedure ↪601

Where valid service of summons was had on defendant on November 9, 1953, and on December 21, 1953, defendant appeared in the action and at all times thereafter had an attorney of record, and during period extending more than five years when many motions were made and ruled upon, plaintiff did not at any time take any steps to have the action tried before the five-year period expired, and did not call court's attention to fact that if action was not brought to trial within five-year period it would be subject to dismissal, plaintiff did not as matter of law bring himself within the out-of-state exception in C.C.P. § 583 requiring trial within five years from date an action is begun, and hence trial court did not abuse its discretion in granting defendant's motion of dismissal. Lewis v. Greenspun (App. 1958) 160 Cal.App.2d 711, 325 P.2d 551. Pretrial Procedure ↪598

Provision of C.C.P. § 981a (repealed), that appeal from justice's court had to be dismissed where appealing party failed to bring it to trial within one year, unless such time was extended by written stipulation filed in court, was

mandatory and deprived superior court of jurisdiction to try cause unless facts appeared which brought it within one of the recognized exceptions. Sanford v. Superior Court of State, In and For Kern County (App. 4 Dist. 1952) 111 Cal.App.2d 311, 244 P.2d 463. Justices Of The Peace ¶166(2)

Where party appealing from justice's court did not file memorandum to set for seven months after appeal was filed in superior court, and thereafter did nothing, although clerk's letter gave adequate warning that if ordinary routine were followed, case would not be tried within the one year period of C.C.P. § 981a (repealed), and there was no showing that it was impossible for such person to bring matter to a hearing within the required period or that he was prevented from doing so by causes beyond his control, superior court was without jurisdiction to entertain the appeal. Sanford v. Superior Court of State, In and For Kern County (App. 4 Dist. 1952) 111 Cal.App.2d 311, 244 P.2d 463. Justices Of The Peace ¶166(2)

53. Specially setting cases--In general

Procedure for special setting by trial judge of case for trial and pretrial is not required to conform in all respects to rules for filing and notice which apply to routine setting by the clerk. Swartzman v. Superior Court In and For Los Angeles County (App. 2 Dist. 1964) 41 Cal.Rptr. 721, 231 Cal.App.2d 195. Trial ¶5; Trial ¶9(1)

54. --- Grounds, specially setting cases

Motion to specially set case for trial requires showing of good cause, and showing that statutory period will run unless case is set is not enough to compel court to grant motion. Nye v. 20th Century Ins. Co. (App. 2 Dist. 1990) 275 Cal.Rptr. 319, 225 Cal.App.3d 1041. Trial ¶9(1)

55. --- Notice, specially setting cases

Subdivision (b) of this rule allowing a party to make a motion in the trial court to specially set the case for trial after notice requires notice to all other parties. Mesler v. Bragg Management Co. (App. 2 Dist. 1990) 268 Cal.Rptr. 522, 219 Cal.App.3d 983, review denied. Trial ¶13(8)

56. --- Denial, specially setting cases

Plaintiffs' alleged lack of diligence in bringing case to trial and a full court calendar were not valid reasons for denial of plaintiffs' motion for specially set case for trial, which denial resulted in case not being brought to trial within five-year period required under West's Ann.Cal.C.C.P. § 583(b) (Repealed). Kotoff v. Efseaff (App. 2 Dist. 1985) 218 Cal.Rptr. 499, 172 Cal.App.3d 991. Pretrial Procedure ¶591

At time plaintiffs moved to specially set case for trial, 97 days remaining of five-year period in which case was required to be brought to trial was a reasonable period in which to set case for trial, and thus, trial court erred in denying motion to specially set case for trial. Kotoff v. Efseaff (App. 2 Dist. 1985) 218 Cal.Rptr. 499, 172 Cal.App.3d 991. Pretrial Procedure ¶591

57. Review, generally

The refusal of a continuance which has the practical effect of denying the applicant a fair hearing is reversible error. Oliveros v. County of Los Angeles (App. 2 Dist. 2004) 16 Cal.Rptr.3d 638, 120 Cal.App.4th 1389. Appeal And Error ¶1043(7)

Even if party's erroneous belief that the case would be heard on affidavits rather than on in-court testimony was

reasonable, trial court did not err in denying a 60-day continuance where other party's witnesses had come from Hong Kong and Samoa for the hearing and a 60-day continuance would have imposed a heavy burden on that party. Joint Holdings & Trading Co., Ltd. v. First Union Nat. Bank of North Carolina (App. 2 Dist. 1975) 123 Cal.Rptr. 519, 50 Cal.App.3d 159. Pretrial Procedure ¶725

Refusal of new trial on ground of surprise was not abuse of discretion, where defendant failed to apply for continuance during several days intervening between close of evidence and direction of verdict. Coats v. General Motors Corp. (App. 1 Dist. 1934) 3 Cal.App.2d 340, 39 P.2d 838. New Trial ¶97

58. Standard of review

Denial of a continuance is a matter of judicial discretion with which there should be no interference unless an abuse of discretion is established. Volkering v. Allen (1950) 96 Cal.App.2d 804, 216 P.2d 552; Connor v. Jackson (1949) 94 Cal.App.2d 462, 210 P.2d 897; Johnson v. Johnson (1943) 59 Cal.App.2d 375, 139 P.2d 33; Miller v. Miller (1943) 57 Cal.App.2d 354, 134 P.2d 292.

The denial of a continuance, sought for absence of witnesses or a party, will not be disturbed, in the absence of an abuse of discretion. McNett v. McNett (1919) 44 Cal.App. 778, 187 P. 447; Mead v. Broads (1913) 21 Cal.App. 324, 131 P. 758.

The appellate court reviews the trial court's determination on a motion for a continuance based on an abuse of discretion standard. Forrest v. State Of California Dept. Of Corporations (App. 2 Dist. 2007) 58 Cal.Rptr.3d 466, 150 Cal.App.4th 183. Appeal And Error ¶966(1)

The appropriate appellate test for abuse of discretion is whether the trial court exceeded the bounds of reason. Hernandez v. Superior Court (App. 2 Dist. 2004) 9 Cal.Rptr.3d 821, 115 Cal.App.4th 1242, as modified. Appeal And Error ¶946

Trial judge's discretion in granting or denying continuance in particular case is broad, and his action will be upheld on appeal unless it appears that denial of continuance resulted in denial of full and fair hearing. Cade v. Mid-City Hospital Corp. (App. 2 Dist. 1975) 119 Cal.Rptr. 571, 45 Cal.App.3d 589. Appeal And Error ¶966(1); Pretrial Procedure ¶713

In regard to obtaining testimony of soldier in service, motion for continuance is addressed to court's sound discretion, and such discretion will not be disturbed in absence of proof of abuse thereof. Culver v. Superior Court In and For Los Angeles County (App. 1 Dist. 1954) 125 Cal.App.2d 76, 270 P.2d 78. Pretrial Procedure ¶713; Appeal And Error ¶966(1)

The granting or refusal of a continuance is a matter of discretion with trial court and its ruling will not ordinarily be disturbed. Schlothan v. Rusalem (1953) 41 Cal.2d 414, 260 P.2d 68. Pretrial Procedure ¶713; Appeal And Error ¶966(1)

The granting or refusing of continuance of trial is matter within sound discretion of court and if not unreasonable or arbitrary it will not be disturbed on appeal. Maynard v. Bullis (App. 1950) 99 Cal.App.2d 805, 222 P.2d 685. Appeal And Error ¶966(1); Pretrial Procedure ¶713

An order denying a motion for a continuance rests largely in the discretion of the trial court and will not be ground for reversal in the absence of a clear showing of an abuse of discretion. Biedebach v. Charles (App. 2 Dist. 1950) 96 Cal.App.2d 250, 215 P.2d 114. Appeal And Error ¶966(1); Pretrial Procedure ¶713

Motions for continuance, permission to reopen a case, and for calling witnesses out of order are largely in discretion of trial court, and it must clearly appear that such discretion has been abused before district court of appeal can reverse the trial court's action. In re Lefranc's Estate (App. 1950) 95 Cal.App.2d 885, 214 P.2d 420, Appeal And Error ¶966(1); Appeal And Error ¶970(3); Appeal And Error ¶970(4); Pretrial Procedure ¶713; Trial ¶59(2); Trial ¶66

The granting or refusing of continuance is a matter of discretion with the trial court and, except in case of a clear abuse of such discretion, appellate courts will not interfere. May v. Rosen (App. 1949) 91 Cal.App.2d 794, 205 P.2d 1118, Appeal And Error ¶966(1); Pretrial Procedure ¶713

An application for a continuance is addressed to sound discretion of trial court and its ruling will not be reviewed except for the most cogent reason and will not be reversed unless an abuse of discretion is shown. Thorpe v. Thorpe (App. 1946) 75 Cal.App.2d 605, 171 P.2d 126, Appeal And Error ¶966(1); Pretrial Procedure ¶713

The granting or refusing of a continuance on account of illness or absence of counsel rests largely, if not wholly, in discretion of trial court, and such discretion will not be reviewed unless it is clearly abused. Jones v. Green (App. 1 Dist. 1946) 74 Cal.App.2d 223, 168 P.2d 418, Appeal And Error ¶966(2); Pretrial Procedure ¶716

Application for continuance for absence of witness is addressed to sound discretion of trial court, whose denial thereof is not ground for reversal, unless he clearly abused discretion, though witness is one of parties. Derkmann v. Von Blumenthal (App. 2 Dist. 1924) 69 Cal.App. 606, 232 P. 152, Appeal And Error ¶966(2)

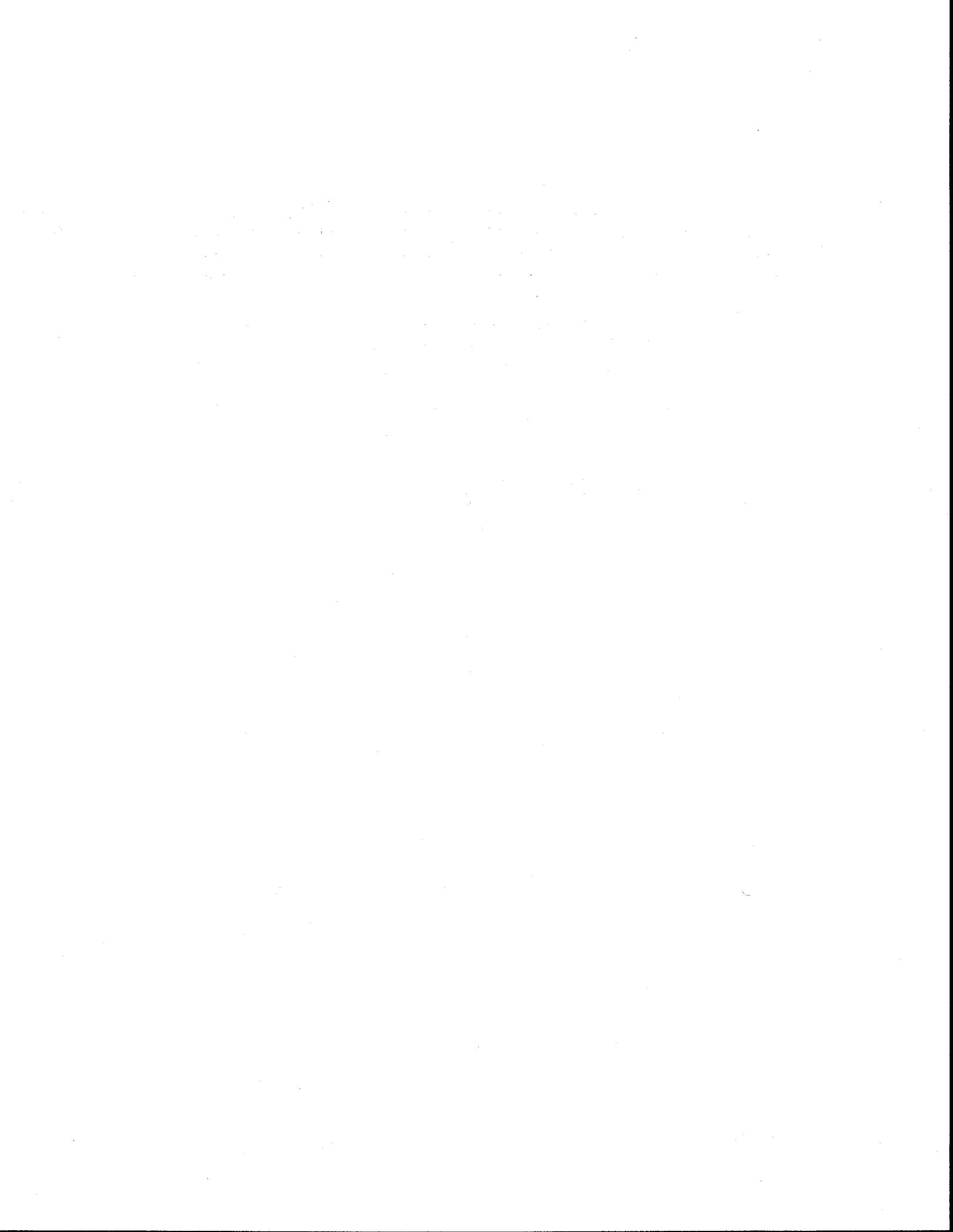
The refusal of a continuance for absence of counsel will not be disturbed in the absence of an abuse of discretion prejudicial to a litigant's substantial rights. Lynch v. Superior Court of City and County of San Francisco (1906) 150 Cal. 123, 88 P. 708, Appeal And Error ¶966(2)

Cal. Rules of Court, Rule 3.1332, CA ST CIVIL RULES Rule 3.1332

Current with amendments received through August 15, 2008

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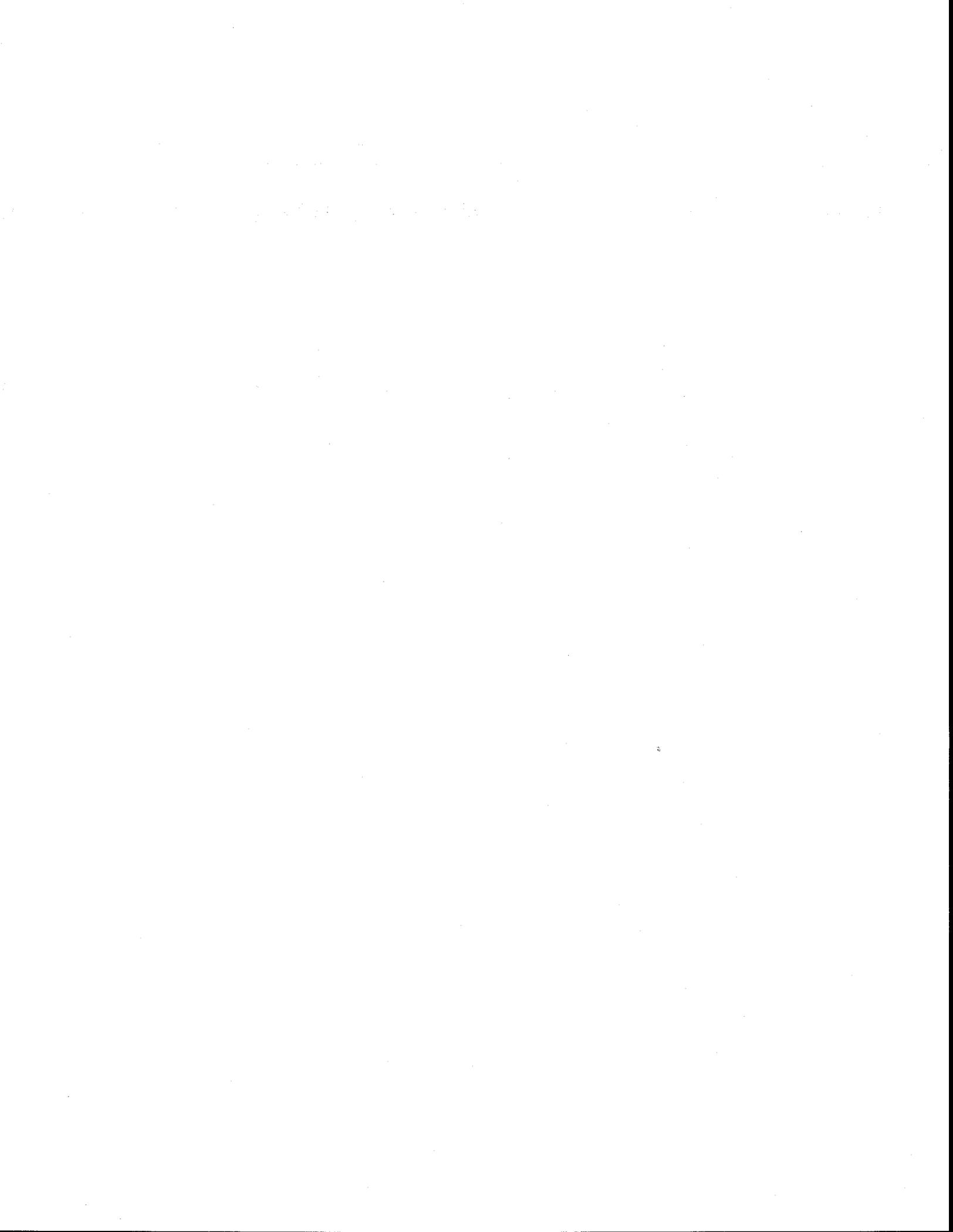


**HANDBOOK FOR
LITIGANTS WITHOUT A LAWYER**

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

Revised April 2006

This Handbook is written by the United States District Court for the Northern District of California and is intended to be used solely for the benefit of pro se litigants without charge. The Handbook is not to be used for commercial purposes.



**CHAPTER 9 -
WHAT IS A CASE MANAGEMENT OR STATUS CONFERENCE,
AND HOW DO I PREPARE FOR IT?**

What is a case management conference?

A case management conference is a meeting with the judge at which the judge, with the help of the parties, sets a schedule for the case. The initial case management conference is held early on. For example, at that initial conference, the judge will usually set a schedule for completing discovery (that is, exchanging information that could be used as evidence), a deadline for filing motions, and a trial date. Later case management conferences may be held to review the progress of the case, and change the schedule as necessary.

What is a status conference?

A status conference can also be called a “subsequent case management conference.” Regardless of which term is used, it is just a conference that the judge holds after an initial case management conference has happened, to check on the status of the case. The rule providing for subsequent case management conferences is Civil Local Rule 16-10(c). Some judges hold status or subsequent case management conferences regularly, while other judges schedule them only when there is a particular need. Generally, a subsequent case management conference is a chance for the parties to tell the judge about the progress of their case, and about any problems they have had in preparing for trial or in meeting the original schedule. In addition, there is a pretrial conference held shortly before trial, where the judge and the parties decide the procedures for the upcoming trial.

When is the initial case management conference?

Under Civil Local Rule 16-2(a), when the complaint is filed, the plaintiff is given a copy of an Order Setting Initial Case Management Conference. The plaintiff must serve that Order on the defendants. The Order sets the date for the initial case management conference, which is usually held around 120 days after the complaint is filed.

Does every case have a case management conference?

No. Certain types of cases, which are listed in Civil Local Rules 16-4, 16-5, and 16-6, do not have case management conferences.

What should I do before the initial case management conference?

There are several things the parties should do to prepare before the initial case management conference. As explained in more detail below, the parties are expected to call each other or meet in person, in a process that is called *meeting and conferring*, and try to agree on a number of issues. These include: making a single proposal for how and when discovery will be done (if a joint proposed discovery plan is required); deciding whether to submit the case to arbitration, mediation, or early neutral evaluation; and preparing the joint case management statement. Among other things, the joint case management statement tells the court the results of your meetings and what positions you have both taken about issues such as discovery and arbitration.

The requirements for case management conferences are explained in detail in Civil Local Rules 16-1 through 16-10, and in Rules 16(b) and 26(f) of the Federal Rules of Civil Procedure. You should also check your judge's standing order, which may have additional rules.

Why do I have to meet and confer?

The point of meeting with the other side and conferring about issues like scheduling, discovery and resolving the case is to save everyone time, work out what you can before going to court, and to make sure both sides are clear on each other's views. Under Rule 26(f) of the Federal Rules of Civil Procedure, unless the case is in one of the categories listed in Rule 26(a)(1)(E), all parties must meet and confer at least 21 days before the case management conference to:

1. Discuss the nature and basis of their claims;
2. Discuss whether there is a way to resolve the case quickly and informally through a settlement;
3. Arrange for initial disclosure of information by both sides as required by Rule 26(a)(1). This includes exchanging the names and contact information of every person who is likely to have information about the issues, certain documents (described in Rule 26(a)), and various other information described in that section; and
4. Develop a proposed discovery plan.

The meet-and-confer is also referred to as a "Rule 26(f) conference."

What is the proposed discovery plan?

The proposed discovery plan is a proposal that the parties make to the court, about how each thinks discovery should be conducted in the case. Federal Rule of Civil Procedure 26(f) requires that the parties submit a joint proposed discovery plan, along with their joint case management conference statement and proposed case management order. This plan must be prepared in collaboration with the lawyers for the other party or parties. The court will review the plan, and discovery will proceed as the judge decides and sets out in the case management order.

The parties must make a good faith effort to agree on a joint proposed discovery plan, which must include each parties' views and proposals about:

1. Any changes that should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;
2. The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be done in phases or be limited to or focused upon particular issues;
3. Any changes that should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or the Civil Local Rules, and what other limitations should be imposed; and
4. Any other orders that should be entered by the court under Rule 26(c) or Rule 16(b) and (c).

What is the case management statement?

Civil Local Rule 16-9 requires the parties to file a joint case management statement and proposed case management order (all in one document) on the form approved by the Court. The clerk's office has both the form, and instructions for preparing a case management statement and proposed case management order. The form and the instructions are provided to the plaintiff at the time the complaint is filed. You can also find the form in Appendix A to the Civil Local Rules.

Under Civil Local Rule 16-9 and Rule 26(f) of the Federal Rules of Civil Procedure, the joint case management statement and proposed case management order must be filed no later than seven (7) days before the case management conference, unless the judge orders otherwise.

This Court's form requires you to describe the results of your discussions with the other side about ADR, or alternative dispute resolution, in the joint case management statement.

The joint case management statement and proposed order should be prepared and filed jointly by all of the parties. However, if preparing a joint statement can't be done because of some special hardship, then the parties may file separate case management statements. Those separate statements must describe the undue hardship that prevented them from preparing a joint statement. Although the court allows parties to file separate case management statements, it is better for the parties to file a joint statement, because it gives the parties more control. If the parties cannot agree on a schedule for the case, the judge may impose his or her own schedule, which may not be the schedule that either party would have wanted.

What about ADR and arbitration?

The joint case management statement also must include a section entitled “Alternative Dispute Resolution” or ADR. ADR is a way of saving time and money by working out parties’ differences without going through all of the formality of civil litigation and trial. This Court offers different kinds of ADR as an alternative to a formal trial; one of them is arbitration, where the parties argue their positions to a neutral person who is not a judge, but is usually a lawyer. This Court’s ADR programs are described in a handbook entitled “Dispute Resolution Procedures in the Northern District of California,” which is provided to you when the complaint is filed. You can get more copies of the handbook at the clerk’s office, and you can also find the same information on the Court’s website at <http://www.adr.cand.uscourts.gov>.

In some cases, you have to try ADR first. Under ADR Local Rule 4-2, certain types of cases are automatically referred to a court ADR program called “non-binding arbitration.” Non-binding arbitration is like a very quick mini-trial, which allows the parties to see how a judge (known as an arbitrator) might decide the case. While the parties do not have to accept the arbitrator’s decision, it often helps parties decide to settle their differences. Under Civil Local Rule 16-8 (b), if your case is not referred to non-binding arbitration, you must sign, serve and file an ADR Certification (along with an extra copy for the court’s ADR Unit) by the date given in your Order Setting Initial Case Management Conference. The form for the ADR Certification can be found at Appendix C to the Civil Local Rules. By signing the ADR Certification, you are telling the Court that:

1. You have read the handbook entitled “Dispute Resolution Procedures in the Northern District of California” or certain portions of the ADR internet site, at <http://www.adr.cands.uscourts.gov>, described in Civil Local Rule 16-8(b);
2. You have met with the other side and discussed the available ADR programs provided by the Court and by other ADR providers; and
3. You have personally considered whether your case might benefit from any of these ADR programs.

You must attach to the ADR Certification either a “Stipulation and (Proposed) Order Selecting ADR Process” or a “Notice of Need for ADR Phone Conference” on the form established by the Court. You can find these forms at Appendix C and D to the Civil Local Rules.

What happens at the initial case management conference?

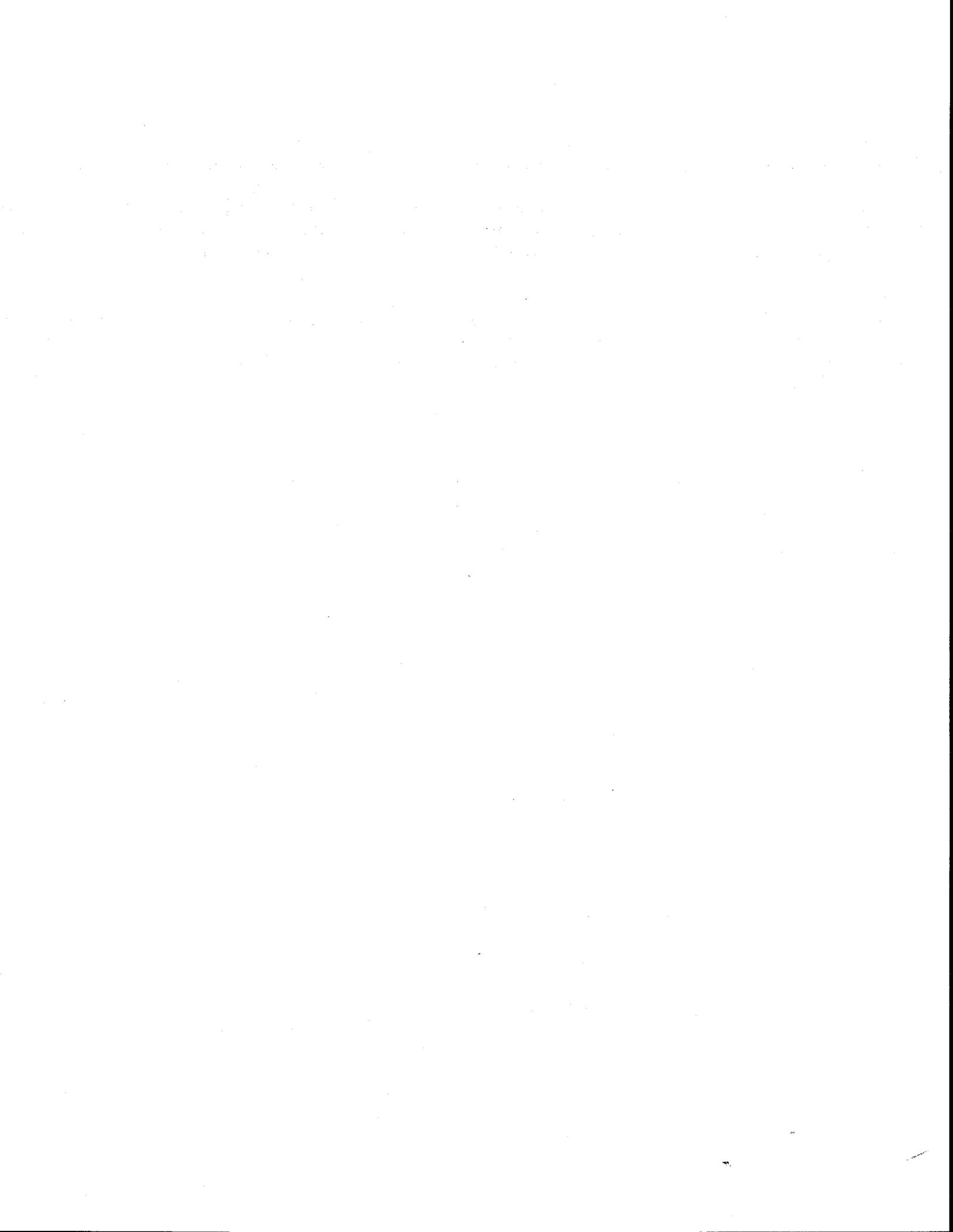
At the case management conference, the judge will discuss the case management conference statement with the parties, and may also discuss other issues in the case. The judge is also likely to discuss the form of ADR most appropriate for your case. You must attend the case management conference in person, unless you file a written request to participate in the conference by telephone. Under Civil Local Rule 16-10(a), requests to participate in the case management conference by telephone must be filed and served no later than five (5) days before the conference, or at the time stated in your judge's standing order. Whether you attend the case management conference in person or by telephone, you must be prepared to discuss all aspects of your case with the judge.

What is the case management order?

During or after the case management conference, the judge will issue a case management order, which will set a schedule for the rest of the case. Sometimes the judge will sign the proposed case management order submitted by the parties. Sometimes the judge will change that order or write an entirely new order. The case management order signed by the judge will control the schedule for the rest of the case unless it is changed later by the judge.

What should I do before other conferences with the judge?

If the judge schedules a subsequent case management conference, Civil Local Rule 16-10(d) requires the parties to file a joint supplemental case management statement at least ten (10) days before the conference. The joint statement must report progress or changes in the case since the last statement was filed, identify any problems with meeting the existing deadlines, and suggest any changes to the schedule for the rest of the case. Your judge's standing order may require other things as well. You should check the judge's standing order. You can find a form for the joint supplemental case management statement and proposed order at Appendix B to the Civil Local Rules. You must attend the subsequent case management conference in person, unless the judge permits you to appear by telephone, and you must come to court prepared to discuss all aspects of the case with the judge.





SUPERIOR COURT OF CALIFORNIA
County of Sacramento
720 Ninth Street ~ Room 101
Sacramento, CA 95814-1380
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Public Notice

PUBLIC NOTICE REGARDING TRIAL SETTING CONFERENCES (Local Rule 6.01)

Effective August 4, 2008, all cases wherein the court has determined the matter is ready for trial will be referred to the new **Trial Setting Process**. Parties will no longer be required to appear in court on a specified date to select their trial dates and mandatory settlement conference dates.

Parties are referred to Master Calendar for selection of a Trial date and Mandatory Settlement Conference date. All counsel (including parties appearing *in pro per*) shall confer and agree upon trial and settlement conference dates. Available dates can be obtained on the court's web site at <http://www.saccourt.com>, or by recorded message accessed by calling (916) 874-6098. Plaintiff's counsel must notify the court of the selection of Mandatory Settlement Conference and Trial dates within 60 days of the date of the order of referral at (916) 874-5446.

The Master Calendar Department will accept telephone calls from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. If no dates have been selected on or before the 60th day, and an extension of time is not granted by the appropriate Case Management Program Judge, court staff will assign the next available Trial date and Mandatory Settlement Conference and the parties will be noticed of the dates.

If the parties chose a trial date that is later determined to be unworkable, or if the Court has chosen a date for the parties they do not want, the parties can make a motion to the Presiding Judge for a continuance.

Parties whose case is currently scheduled for trial setting conference may mutually agree to use the new process if they so desire prior to their scheduled appearance or they may appear at the scheduled trial setting conference.



CHAPTER 2 - MASTER CALENDAR DEPARTMENTS

2.00 Master Calendar Departments.

The Department of the Presiding Judge is designated as the primary Master Calendar Department.

In the discretion of the Presiding Judge, there shall additionally be designated subordinate master calendar departments for criminal cases, civil cases, limited civil cases, and unlawful detainer proceedings.

The several master calendars shall be called each judicial day by the Presiding Judge or designee, and the cases then ready for trial shall be transferred to any department of the court designated by the Presiding Judge.

(Amended effective 1/1/99)

2.01 Prerogative Writs.

(A) Except as provided in paragraph (H), petitions for writs of mandate, review, and prohibition shall be filed with the clerk of the court and shall be immediately assigned to a judge for all purposes, as directed by the Presiding Judge and a Notice of Assignment shall issue. If the petition is combined with a complaint for injunctive and/or declaratory relief, the assignment shall apply to the complaint as well as the petition.

(Amended effective 1/1/07)

(B) When filing any papers related to a petition for prerogative writ, the parties shall furnish the court with one original which is unbound and clipped or rubber banded and two copies in a format pursuant to California Rules of Court, rule 3.1110.

(Amended effective 1/1/08)

(C) All subsequent documents in the case shall be filed and paid for at the court's public filing counter. Documents filed within one day of the hearing shall be filed and paid for at the court's public counter and an endorsed copy shall be delivered to the assigned department.

(Amended effective 7/1/08)

(D) Points and authorities prepared for a hearing on the merits of a writ petition shall not exceed 50 pages in length and shall be filed in accordance with the following schedule: The opening points and

authorities shall be filed at least 45 days prior to the hearing date; the opposition shall be filed at least 25 days prior to the hearing date; and the reply shall be filed at least 15 days prior to the hearing. Points and authorities prepared for a motion to be heard prior to the merits of a writ petition shall comply with the filing schedule and page limits specified in rules 3.1113 and 3.1300 of the California Rules of Court. In the event that the points and authorities exceed 10 pages in length, the filing party must also comply with subsection (B) above.

(Renumbered and amended effective 1/1/07)

(E) A guide to the procedures for prosecuting petitions for prerogative writs in the Sacramento Superior Court is provided by the legal process clerks to each party filing a civil writ petition, is available from the clerk in each assigned writ department, and is posted on the Sacramento Superior Court's internet website (www.saccourt.com). Counsel shall obtain and follow this procedural guide in applying for a stay, setting a hearing by notice or alternative writ on the merits of a writ petition, bringing a motion prior to a hearing on the merits, and taking other actions covered in the guide.

(Renumbered effective 1/1/07)

(F) All applications for relief from this rule shall be made to the judge assigned the case.

(Renumbered effective 1/1/07)

(G) Mediation in Land Use and Environmental Actions. The petitioner in land use and environmental writ proceedings, at the time of the deadline for the response to the petition, shall prepare and lodge with the assigned department a notice form for the court's signature inviting mediation pursuant to Government Code section 66031(b). A sample form may be obtained from the clerk in the assigned department.

(Renumbered effective 1/1/07)

(H) Petitions for writs of mandate, review, and prohibition arising from any misdemeanor case, infraction case, or limited civil action shall be filed with the clerk of the appellate unit of the clerk's office and heard by the Appellate Division of the Superior Court in accordance with the rules of the Appellate Division.

(Renumbered effective 1/1/07)

2.02 Presiding Judge Law And Motion Proceedings.

(A) Master Calendar Departments are designated as law and motion departments for such matters as the Presiding Judge may direct in relief of the other law and motion departments. Law and motion matters in the Master Calendar Department will be called Tuesday through Friday mornings at a time to be designated by the Presiding Judge. (Amended effective 1/1/06)

(B) Unless otherwise directed by the Presiding Judge, in civil and limited civil actions, all motions for consolidation, severance, bifurcation, intervention, pretrial conference, coordination and to advance or for continuance of trial, a setting conference, or pretrial conference shall be heard by the Presiding Judge. All motions for change of venue in Family Law cases shall be filed and heard in the Family Law Department in which the case is assigned. All other change of venue motions shall be heard by the Presiding Judge. Motions to continue trial setting conferences when brought more than 7 days in advance of the trial setting conference shall be heard by the CMP program judge pursuant to Local Rule 11.16. Except for good cause, any such motions shall be made upon written notice to all parties. The notice shall be given and the motion made promptly upon the necessity for the continuance, change of venue, consolidation, coordination, intervention, severance, pretrial conference, or bifurcation being ascertained. (Amended effective 7/1/07)

(C) Motions to Continue Trial Date.

(1) All trial continuances, including those requested upon the parties' stipulation pursuant to section 595.2 of the Code of Civil Procedure, are within the court's discretion.

(2) For the purpose of assigning a trial date in the tentative rulings, all motions to continue a trial date shall include the moving party's attorney's calendar showing the attorney's availability as follows:

(a) If no new trial date is requested, for the 90-day period following the current trial date.

(b) If a new trial date is requested, for the 60-day period following that date.

All other parties, whether or not they oppose the motion to continue the trial date, shall, within the time limits for filing an opposition, file papers showing the attorney's calendars for the time period specified above.

(Amended effective 1/1/96)

(D) Tentative Ruling System.

(1) All parties appearing on the law and motion calendar in the Presiding Judge's department shall utilize the tentative ruling system. On the afternoon of the court day before each calendar, the Presiding Judge will cause to be recorded a tentative ruling on each matter on the next day's calendar. The tentative rulings will be available by telephoning a recorded message after 2:00 p.m. or by accessing the court's web site at <http://www.saccourt.com>. Thus, if a party has a matter on a Wednesday calendar, they may call the recorded message or access the web site after 2:00 p.m. on Tuesday afternoon. Tuesday's tentative rulings may be obtained on Monday afternoon, and so forth. The recording will be a continuous play recording that will contain (1) brief instructions as to how to respond to the tentative ruling; (2) a tentative ruling in each case; and (3) whether the court invites counsel (or parties in pro per) to appear for limited argument on the matter.

(2) The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the department clerk no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

(3) Where appearance has been requested by counsel or invited by the court, limited argument will be entertained.

(4) All noticed motions in the Presiding Judge's department shall include the following information in the notice:

"Pursuant to Local Rule 2.02(D), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. To receive the tentative ruling, call the Presiding Judge's department at 874-8142. If you do not call the court and the opposing party by 4:00 p.m. the court

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day before the hearing, no hearing will be held."

(Amended effective 7/1/00)

2.05 (deleted effective 1/1/01)

2.03 Continuance Of Civil Setting Conference, Civil Pretrial Conference, Or Civil Trial.

In civil matters, a continuance of a setting conference, pretrial conference, or a trial, whether or not opposed, shall be only by order of the Presiding Judge or the Presiding Judge's designee.

(Effective 7/1/94)

2.04 Ex Parte Applications In Presiding Judge's Department.

(A) All ex parte applications for temporary relief, orders to show cause, orders shortening or extending time, or other kinds of orders shall be set in the department of the Presiding Judge each day, by appointment only, with at least 24 hours' notice to the opposing party or counsel. Ex Parte Applications and supporting documents shall be filed and paid for at the court's public counter and endorsed copies shall be brought to the department at the time of the appointment. Such applications must include a written supporting declaration, stating whether opposing party is represented by counsel, whether that party has been contacted and has agreed to the requested order, or why the order should be issued without such notice. The adequacy of the application for temporary relief will be determined on the papers submitted. If the application is deemed adequate, the court may allow supplemental argument, either oral or written, by either party.

(Amended effective 1/1/08)

(B) Except by order of the court, upon a showing of good cause, all ex parte applications presented to the court seeking to set a matter on shortened time must provide for opposition papers to be filed and served five court days and reply papers to be filed and served two court days prior to the hearing date. The court, in its discretion, may order a shorter time or that there be no reply; but in no event shall the last paper be filed later than 9:00 a.m. two court days before the hearing. The moving papers must be accompanied by a copy of the order and all papers, including subsequent papers filed in the matter, must indicate on the caption page that the matter was brought on an order shortening time with specific identification of the date of the order and name of the Presiding Judge.

(Effective 7/1/94)



CHAPTER 6 - CIVIL PRETRIAL AND TRIAL SETTING FOR CIVIL CASES

6.00 Applicability Of Chapter.

This chapter shall apply to all civil cases that have not otherwise been assigned to a judge for trial.
(Amended effective 7/1/04)

6.00.5 Setting Civil Cases For Trial.

(Heading amended effective 1/1/03)

(A) Limited Cases

All limited civil cases including those previously exempted from the Case Management Program, shall be set for trial by filing an appropriately completed Case Management Statement requesting trial (or a certificate in compliance with Local Rule 11.056). Short cause limited civil cases (five hours or less) will be set for trial by Department 47 at 8:30 a.m. on Fridays. Long cause limited civil cases will be set for trial in accordance with Rule 6.01.
(Amended effective 7/1/08)

(B) Unlimited Cases

All unlimited cases, including those exempt from the Case Management Program, shall be set for trial by either: (1) a judge ordering the matter set for a short cause trial after review of a Case Management Statement or a certification in compliance with Local Rule 11.056; (2) a judge ordering the matter to trial setting in accordance with Rule 6.01 after a Case Management Conference; (3) a judge who finds that direct trial setting to a date certain is appropriate in a particular case; or (4) a party filing a request for a trial de novo after arbitration.
(Amended effective 7/1/04)

6.01 Trial Setting Process For Civil Cases Other Than Short Cause Matters.

(Heading amended effective 7/1/08)

(A) Within 60 calendar days of the date of the order to trial setting or the filing of a request for trial de novo after arbitration, the parties must confer and agree on a trial and a settlement conference date. Plaintiff's counsel will call the Master Calendar Department to advise the court of the dates selected and will serve and file a Notice of Time and Date of Trial and Mandatory Settlement Conference. Available trial and settlement conference dates will

be provided on the court's web site at <http://www.saccourt.com> and will be updated daily.
(Amended effective 7/1/08)

(B) If the parties cannot agree or fail to select dates within the time specified in paragraph (A) of this rule, the court will select a trial date and a mandatory settlement conference date and serve notice on the parties.
(Amended effective 7/1/08)

6.02 (deleted effective 7/1/04)

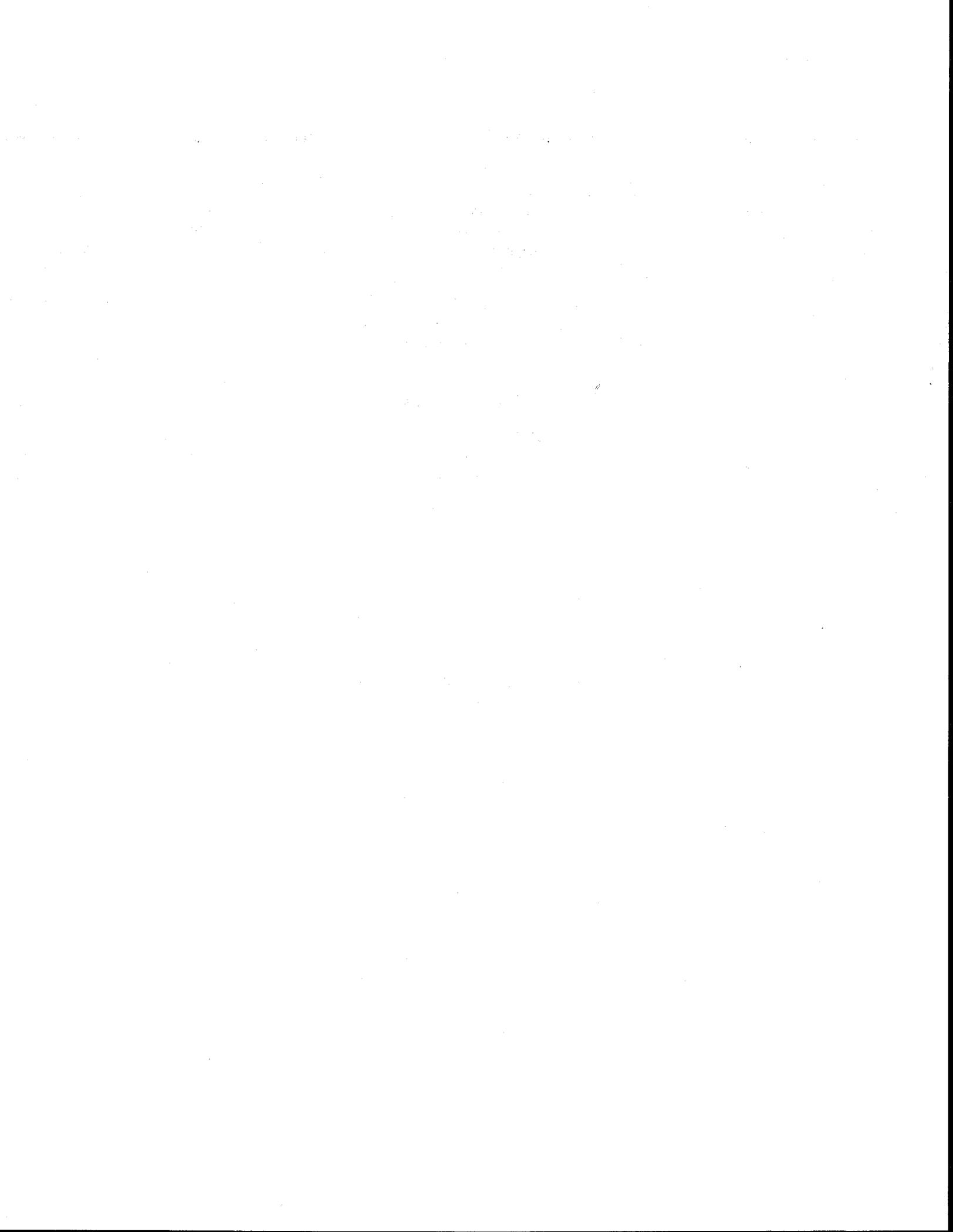
6.03 (deleted effective 7/1/04)

6.04 (deleted effective 7/1/04)

6.05 (deleted effective 7/1/04)

6.06 Duties If Case Settles.

Whenever a case assigned a trial date settles, the parties shall immediately notify the court. The plaintiff has the primary obligation to notify the court. Notification may be made by telephone to the Master Calendar Clerk and must be followed by a letter of confirmation. When written confirmation is received, the court will vacate the trial date and drop the action from the civil active list.
(Amended effective 7/1/04)



	<p align="center">SUPERIOR COURT OF CALIFORNIA County of Sacramento 720 Ninth Street, Room 102 Sacramento, CA 95814-1380 (916) 874-5522—Website www.saccourt.com</p>	<p>For Court Use Only</p>
<p>Attorney or Party Without Attorney (Name, State Bar # and Address):</p> <p>Telephone No.: _____ Fax No: _____ Attorney for (Name): _____</p>		
<p>Plaintiff: _____ Defendant: _____</p>		<p>Case Number: _____ Assigned Dept.: _____</p>

**Ex Parte Application to Extend Time to Select Trial Date and
Mandatory Settlement Conference Date**

and Request to Vacate Trial Setting Conference

The parties to the above action agree that selection of a Trial date and Mandatory Settlement Conference date cannot be agreed upon within the time period allowed. All parties and counsel to the action have stipulated as follows:

Detailed reasons for extension of time (attach additional pages if necessary): _____

Current Trial Setting Conference Date: _____

Date complaint was filed: _____

Expiration date of current referral to Trial Setting Process: _____

Number of previous applications to extend selection date: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ Dated

_____ Signature of Attorney or Party with Attorney

_____ Attorney for:



Plaintiff:
Defendant:

Case Number:

- Extension granted as requested. Time to select Trial date and Mandatory Settlement Conference date extended. Dates shall be selected no later than: _____
- This matter is set for an ex parte hearing in Department _____ on: _____ at: _____. All counsel are ordered to appear.
- This case is ordered to the Trial Setting Process. The Trial and Settlement Conference dates shall be selected no later than _____
- Extension denied
- The Trial Setting Conference is vacated.
- A Case Management Conference shall be noticed for hearing on _____ at 8:30 a.m. in this department. Case Management Statements shall be filed by all parties no later than 15 days prior to the hearing. Counsel for moving party to provide notice.
- It is further ordered that: _____

Dated:

JUDGE OF THE SUPERIOR COURT

NOTICE TO COUNSEL REQUESTING EXTENSION: Serve a copy of this order on all parties who have appeared in this action. If an ex parte hearing is required by the Court, comply with California Rule of Court 3.1200 et seq.