



IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar

Honorable Nancy L. Fineman
Department 4
400 County Center, Redwood City, Courtroom 8B

**UPDATE RE: LAW AND MOTION MATTERS AND
JUDGE FINEMAN'S SPECIAL SETS**

Because of the COVID-19 epidemic, leading to health and safety concerns, and the Orders of the Presiding Judge regarding the San Mateo County Superior Court's response to the emergency, the Court will not be hearing Law and Motion matters from March 17 through at least May 21, 2020. Therefore, all Law and Motion matters are continued and will need to be rescheduled.

The Civil Law and Motion department will be operational as soon as public health officers inform us that it is safe to hold hearings. Please check back to this website on May 18, 2020 for further information.

It is the current intent of the Court to continue the Law and Motion calendars, which have not been held, for a certain number of days (which date the Court will set) and request that the moving party provide notice of this new date. In this way, the matters will be heard in the same order as originally calendared. The Court will also have a procedure where counsel can request to advance matters. Since the Court does not know the exact date when Law and Motion hearings can start, the Court does not want to reschedule the hearings and then have to reschedule them again. Once Law and Motion hearings begin, the Court strongly recommends that counsel appear by Court Call.

Counsel are encouraged to meet-and-confer with their opposing counsel to see if resolutions can be reached regarding their motions without the need for court intervention. They can email the Law and Motion Department at LawAndMotion@sanmateocourt.org if a matter is being vacated. See Local Rule 3.9(c) for procedure. The email is not to be used for any other purpose at this time and is not currently being monitored.

The Court is mindful of the fact that many attorneys and litigants involved with civil cases wish that these calendars be reopened, especially the Law and Motion calendar. There have been suggestions to use e-filing and CourtCall to start hearing these cases again. The Court is sympathetic to those attorneys and litigants in civil cases whose cases are not being heard at this time. However, effectively reopening Civil would necessitate the calling in of a large number of court staff to process filings (even electronically filed papers) and staff the courtrooms. More judges, including those sheltering at home, would have to be called back into court. This would significantly increase the risk of spreading the COVID-19 and would arguably be in violation of the County's Shelter-in Place Order.

The reduction of these calendars, as well as suspension of trials, will allow the court to operate with fewer staff, and therefore reduce social interaction with the public. Court management has implemented a plan for limiting staff presence at the courthouse to only those essential to maintain the operation of the calendars currently being heard. Most of the staff will continue to be sent home to shelter-in-place.

The Court appreciates the parties' continuing cooperation and professionalism during these unprecedented times.

The Court is working on ways to decrease the backlog once hearings resume and welcomes your suggestions.

In order to increase efficiencies and benefit the Court and parties, the Court offers the following suggestions to attorneys:

- Is your motion or opposition really necessary? The law favors the granting of different type of motions, *e.g.* motions to amend and motions for relief from default. Try to obtain a stipulation to these motions and, if appropriate, negotiate the terms. For example, a defendant may be able to agree to a motion to amend a complaint as long as there is the ability to obtain certain discovery. For motions where the opposing party wants discovery, *e.g.* summary judgment motions or motions to quash, work out what discovery will be done and the timeframe, and then, at least three days before the hearing, continue the motion. See Local Rule 3.9.

- Have you complied with all the requirements of the motion? Regrettably, the Court often must deny motions without prejudice on procedural grounds. For example, counsel in motions to be relieved as counsel fail to use the mandatory Judicial Council forms and fail to demonstrate that the client's address is current. For demurrers and motions to strike, often the meet-and-confer requirements of Code of Civil Procedure § 430.41(a)(3) have not been met. For motions that seek both summary judgment and adjudication, often times the requirements for summary adjudication are not met. There are many excellent practice guides which provide a straight-forward explanation of the required elements of a motion. Use these guides; the Court does. Also, motions are denied when there is no proof of service in the Court file showing service to all parties at the address that is in the Court's records.

- Is your discovery motion really necessary? Most issues can be resolved with meaningful meet and confer. The scope of civil discovery is broad, Code of Civil Procedure § 2017(a), but it is not limitless. See *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216. "The statute requires that there be a serious effort at negotiation and informal resolution. . . . Argument is not the same as informal negotiation; that attempting informal resolution means more than the mere attempt by the discovery proponent to persuade the objector of the error of his [or her] ways; and that a reasonable and good faith attempt at informal resolution entails something more than bickering with opposing counsel. Rather, the law requires that counsel attempt to talk the matter over, compare their views, consult, and deliberate." *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294 (citations, internal quotations and some grammar omitted, bracketed material added).

- Can the parties stipulate that the reply briefs for motions for summary judgment/adjudication will be filed and served five court days before the hearing? For some reason, while the reply briefs for most motions are due five court days before a hearing, reply briefs for summary judgments/adjudications are due five calendar days before the motion. It would be extremely helpful to the Court if the parties would agree to advance the due date of the reply brief to at least five court days before the hearing, which probably means that the opposition would be due a few days earlier.

- Can you provide more explanation for your objections to evidence? It would be helpful to the Court if counsel would provide more explanation for the each objection rather than file objections with citations only to the Evidence Code. Further, counsel must comply with the rules governing the format for objections and motions to strike. For example, counsel should quote and provide the page and line number of the material subject to the objection, rather than simply referring to the paragraph in which it appears. See California Rule of Court 3.1354.

- Can you submit a proposed order that the Court can use as a tentative? Counsel should submit a proposed order with their filings and it is helpful to the Court when the proposed order contains, in a neutral way, the legal authority and facts that the party would like the Court to include in an order. Critically, when a motion is ruled upon and the prevailing party is ordered to prepare the order, that party must comply with California Rule of Court 3.1312, which requires that the party send the proposed order to the other side, provide the other side with five days to respond, and then submit the order to the Court and include the other side's response or lack of response.

- Is your *ex parte* authorized and is it really necessary? *Ex parte* applications take the judge and research attorney away from working on regularly scheduled motions and are only granted for certain specified motions based upon a showing of good cause. Consider whether the motion can be submitted to the general civil signing judge rather than *ex parte*. Make sure that the issue may be raised on an *ex parte* basis and that there is good cause for the request. "Mere lack of time for statutory notice is not a sufficient showing." Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial* § 9:364 (TRG 2019) citing California Rule of Court 3.1202(c); *Eliceche v. Federal Land Bank Ass'n* (2002) 103 Cal.App.4th 1349, 1369.

- Is your oral argument just going to repeat the facts and arguments that you made in your brief and lost? The judge, with the assistance of legal research attorneys, has read, analyzed and considered all the arguments you raised in your briefs. Your briefs then are critically important and should contain all the information, including relevant legal authorities, which you need to prevail. The Court welcomes oral argument, but your argument should respond to the tentative and focus on issues found significant by the Court.

- Can your case be resolved through some form of alternative dispute resolution now? The Court understands that not every case can be resolved short of trial, but under the current circumstances, early ADR may be an alternative to consider.