



**DEPARTMENT 17 - COMPLEX LITIGATION  
THE HONORABLE GEORGE C. HERNANDEZ, JR. PRESIDING**

**GENERAL GUIDELINES FOR LITIGATING IN DEPT. 17**

**Dept. 17 Staff and Communications**

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Email is the preferred method of communicating with Department 17. Do not send attachments without prior permission, as they can fill the department's in-box, causing it to shut down and be unavailable to the court or litigants. Chambers copies must be delivered as set forth below.

**Hearing Dates**

Before contacting the clerk to request a hearing date or continuance, always meet and confer with opposing counsel regarding all counsel's availability. It is strongly suggested that you jointly contact the clerk by email with multiple dates on which all counsel are available.

**Chambers copies**

A chambers copy of each paper filed in connection with motions, applications, case management and other proceedings should be hand-delivered directly to Department 17 as close as possible to the date of filing. Time-sensitive documents, including reply memoranda, should not be sent via U.S. Mail or overnight courier, as routing the documents to Department 17 typically takes an additional 2-3 business days.

**Electronic Service ("e-service")**

Parties should stipulate to electronic service early in the case. (See CRC 2.251.)

**Case Management Conferences**

Statements should be in joint, narrative form and identify the issues counsel wish to discuss at the conference. Do not file CM-110s. The joint statement should be submitted at least five (5)

court days before the CMC. Statements may be submitted using E-Delivery by submitting directly to the E-Delivery Fax Number (510) 267-5732. . A chambers copy should also be hand delivered to Dept. 17 at the time of filing. Always check DomainWeb before the hearing to see if a tentative case management order has been posted.

### **Protective Orders**

A protective order should be entered as early in the case as practicable. Counsel should meet and confer about the form of order before the initial case management conference if possible. For a suggested form of order, see "Model Protective Order - Complex" on Department 17's "documents" page (under the "Complex Litigation" tab at <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>).

### **Demurrers**

Demurrers are often a poor use of resources, both private and judicial. To avoid wasting time, the parties should thoroughly meet and confer, including exchanging drafts of proposed demurrers and amended complaints, until they reach an impasse. Only when the complaint is truly the best that the plaintiff can muster should a challenge be filed, and then only if it either will result in a complete dismissal or will significantly narrow the scope of discovery. If a demurrer or motion for judgment on the pleadings is filed, the moving party should, with the chambers copy only, include a copy of the challenged pleading.

### **Discovery**

In most cases, counsel should focus their efforts on documents and depositions, and utilize interrogatories and requests for admission in a selective fashion. Consider numbering all documents once, good for all uses at deposition, motions and trial.

Usually there is significant overlap between so-called "class certification" and "merits" discovery and thus no basis to stay "merits discovery" early in the case. Counsel should, however, consider phasing discovery before class certification motions, as discussed below.

Before obtaining a reservation from the clerk for a motion to compel or other discovery motion, counsel must:

- (a) meet and confer in person or via telephone (not just an exchange of emails or letters) regarding every disputed item, doing everything they can to narrow the issues; and
- (b) comply with the court's informal discovery protocol, as follows: The aggrieved party shall submit to Dept. 17 via email and hand delivery a 3-page letter, without any attachments, outlining the dispute(s), with a copy to opposing counsel and to Dept. 17's research attorney; Dept. 17 will wait 2 court days for a response, before providing informal guidance and, when appropriate, provide permission to file the appropriate motion(s).

### **Dismissal of Class Claims**

Any application that requests dismissal or has the effect of dismissing class claims (e.g., stipulation to file an amended complaint) must comply with CRC 3.770. This may be done by ex parte application with supporting declaration(s). Judicial Council form CIV-110 should not

be used. Sufficient evidence must be presented upon which the court may base its CRC 3.770(c) findings regarding notice to the class. Supporting declarations should also describe any informal notice class members may have received regarding the proceedings through press releases, media coverage, word-of-mouth, communications with plaintiff(s) or their counsel, etc., and whether notice of dismissal must be given (and to whom) in order to avoid prejudice to persons who may be relying on the pendency of a (putative) class action..

### **Class Certification**

The parties should consider "staggering" discovery prior to class certification as follows:

- 1) Plaintiff takes all discovery needed to prepare and file the motion, obtains a reservation number for a "placeholder" hearing date 2-3 weeks after the motion will be filed and served, and files and serves the motion. A CCMC is set for the placeholder hearing date.
- 2) Defendant evaluates the motion and determines the scope of discovery needed to oppose; the parties meet and confer about defendant's discovery and a due date for the opposition and submit a joint CMS; at the CCMC, the Court sets the due date and continues the class certification motion and CCMC to a date two weeks after the opposition is due.
- 3) After defendant files the opposition, plaintiff determines what, if any, further discovery is needed, the parties meet and confer and submit their joint CMS, and at the CCMC, the court sets a reply due date and hearing date for the motion.

In all cases, the reply brief should be filed 10 days before the hearing.

### **Evidentiary Objections (Class Certification, Summary Judgment, etc.)**

Evidentiary objections are unnecessary in the context of most motion practice, except summary judgment/adjudication. To that end:

... we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices.

*(Reid v. Google, Inc. (2010) 50 Cal.4th 512, 532-33.)*