INTERNAL OPERATING PRACTICES AND PROCEDURES FOURTH APPELLATE DISTRICT, DIVISION THREE

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Sections

INTERNAL OPERATING PRACTICES AND PROCEDURES FOURTH APPELLATE DISTRICT, DIVISION THREE 1

SECTION I: INTRODUCTION 2

SECTION II: STRUCTURE OF COURT AND ORGANIZATION OF STAFF 2

SECTION III: ETHICAL SCREENS 3

SECTION IV: PROCEDURES FOR PROCESSING CASES 4

A. Filing 4

B. Screening of New Cases 4

C. Motions and Applications 5

D. Original Proceedings, etc. 6

E. Assignment of Cases to Chambers 8

F. Oral Argument and Waiver Thereof, Conferencing of Cases 9

G. Submission of Cases and Decision 13

SECTION V: SETTLEMENT 14

A. Notice of Settlements. 14

B. Stipulated Requests for Dismissal. 14

C. Stipulated Requests for Reversal. (Code Civ. Proc., §128, subd. (a)(8).) 14

D. Settlement Conferences 15

SECTION I: INTRODUCTION

This document describes internal operating practices and procedures of this court. These practices and procedures supplement the Constitution and statutes of the State of California, the California Rules of Court, and the Fourth Appellate District Local Rules that otherwise govern the court's business.

This court is located at 601 W. Santa Ana Blvd., Santa Ana, California 92701. The clerk's office is open to the public from 9:00 a.m. to 4:30 p.m. The phone number for the clerk's office is (714) 571-2600. The website for the Fourth Appellate District is located at https://www.courts.ca.gov/4dca.htm.

SECTION II: STRUCTURE OF COURT AND ORGANIZATION OF STAFF

Division Three of the Fourth Appellate District is currently authorized eight justices — a presiding justice and seven associate justices. The Chairperson of the Judicial Council may periodically assign pro tem justices to assist the court.

Each justice's chambers staff consists of two or three judicial attorneys and a judicial assistant. Many of the justices also utilize law student externs who may receive academic credit, without pay, while working at the court.

The presiding justice "(1) Generally directs and supervises all of the division's court's employees not assigned to a particular justice; (2) Has authority to act on behalf of the division regarding day-to-day operations; (3) Administers the division budget for day-to-day operations, including expenses for maintenance of facilities and equipment; and (4) Operates, maintains, and assigns space in all facilities used and occupied by the division." (Cal. Rules of

Court, rule 10.1004(d).)

The managing appellate court attorney supervises a separate central staff. The managing appellate court attorney and central staff work under the direction and supervision of the presiding justice. They review original proceedings, motions, and applications (such as extension requests). They also act as counsel for the clerk's office and assist in the evaluation of cases.

The assistant clerk/executive officer is selected by the presiding justice of Division Three and works under the general direction and supervision of the presiding justice. The assistant clerk/executive officer is responsible for planning, organizing, coordinating, and directing the management of the court's administrative staff and all nonjudicial support activities as prescribed in the California Rules of Court, rule 10.1020(d) for Division Three. The assistant clerk/executive officer is responsible for all Division's Three support activities, including personnel, budget, technology, and facilities under the general direction of the presiding justice.

SECTION III: ETHICAL SCREENS

The court maintains an ethical screening process for its judicial attorneys, judicial assistants, clerks, externs, and other staff members in order to maintain and preserve public confidence in the judicial system. The purpose of this process is to inform the justices at the earliest possible opportunity of any circumstances of an actual or potential conflict of interest involving a court staff member that could give rise to the need for an ethical screen. If applicable, the ethical screen is promptly implemented.

SECTION IV: PROCEDURES FOR PROCESSING CASES

A. Filing

All documents are filed with the clerk's office, which processes the documents, identifies formatting defects in the documents, communicates with counsel, and distributes the filed documents to the appropriate court employees.

The court has implemented mandatory electronic filing. The California Rules of Court, rules 8.70-8.79, require all filings to be made through the court's electronic filing system, unless an exemption applies.

Prior to the completion of briefing and assignment of a case to a designated justice's chambers, filings that request a ruling are distributed to the managing attorney and central staff. Once a matter is assigned to a designated justice and panel for decision, additional filings are routed to chambers.

B. Screening of New Cases

All notices of appeal and civil case information statements are reviewed promptly by central staff. This initial review is designed to identify facially apparent concerns regarding appealability or the timeliness of the notice of appeal. In appropriate cases, the court will consider on its own motion whether to dismiss appeals in full or in part. In such instances, the parties will be provided an opportunity to file letter briefs or other responses to concerns identified by the court. A failure to oppose a motion may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c).) The parties should not consider this preliminary review to be conclusive when it does not result in dismissal, but should address any

appealability and timeliness concerns by way of motions or in their briefs.

C. Motions and Applications

1. With the exception of motions filed prior to appellant's opening brief in criminal appeals and juvenile appeals, the court's general practice is to hold motions on appeals (Cal. Rules of Court, rule 8.54) in the clerk's office until (1) an opposition has been served and filed, or (2) the time has passed to serve and file an opposition, whichever is earlier. To expedite the processing of an unopposed motion, the moving party should inform the court on the cover of the motion that the other party or parties do not oppose the motion.
2. Motions in writ proceedings are immediately transmitted to central staff and are not necessarily held for opposition, depending on the circumstances.
3. Following the dismissal of an appeal for a procedural default, parties are encouraged to file motions to vacate the dismissal and to reinstate the appeal as early as possible. This court loses jurisdiction to vacate dismissal and reinstate the appeal 30 days after the appeal is dismissed. (Cal. Rules of Court, rule 8.264(b)(1).) However, if a motion to vacate dismissal and reinstate the appeal is filed near the jurisdictional deadline, the motion will not be held for opposition as there would be insufficient time to rule prior to losing jurisdiction. Parties opposing reinstatement of the appeal should immediately contact the clerk's office, communicate their intent to file opposition, and file opposition promptly thereafter if they intend to oppose such a motion.

4. Applications (Cal. Rules of Court, rule 8.50), including applications for extensions of time (Cal. Rules of Court, rule 8.60), generally are not held by the clerk's office for opposition to be filed. Parties intending to file opposition to an application should immediately notify the clerk's office, communicate their intent to oppose the application, and promptly file opposition thereafter.
5. Consistent with the presiding justice's duty to maximize the use of judicial resources and increase the efficiency of court operations (Cal.Rules of Court, rule 10.1012; cf. Cal. Rules of Court, rule 10.603(a)), rulings on motions are often deferred to be decided in conjunction with the decision on appeal. Examples include but are not limited to: (a) motions to dismiss the appeal that appear to require the expenditure of court resources similar to the determination of the merits of the appeal itself; (b) requests for judicial notice that appear to require a full understanding of the record or issues in dispute in order to rule on the request; and (c) motions filed after briefing is substantially underway.

D. Original Proceedings, etc.

1. The presiding justice assigns on a quarterly basis three justices to serve as the court's primary "writ panel" for a three-month period. Alternates are also assigned to cover absences and conflicts. Furthermore, consistent with the presiding justice's responsibility to ensure fair and expeditious resolution of disputes (Cal. Rules of Court, rule 10.1012; cf. Cal. Rules of Court, rule 10.603(a)), "prior panels" are often utilized when a pending petition or motion is

related to a prior appeal or petition handled by that panel.

2. In addition to original proceedings, the writ panel also rules on supersedeas petitions, transfer petitions, petitions for interlocutory appeals, and motions requiring rulings by a three-justice panel prior to the assignment of the case to a panel for decision in an appeal.
3. The clerk's office notifies central staff when a matter requiring their attention is filed. Central staff determines the urgency of the relief sought. The matter is calendared for a weekly writ panel conference if court action is not required immediately. Impromptu writ conferences are held when court action is required earlier. Either way, central staff attorneys prepare written summaries, which are provided to the writ panel members. Under the supervision and by order of the presiding justice, informal briefing may be solicited from the parties prior to the presentation of the matter to the writ panel for a decision.
4. Consistent with Fourth Appellate District Local Rule 1(a), parties seeking an immediate stay must either personally serve all other parties to the proceeding or serve by another expeditious method (e.g., email) that is consented to by the other parties. Such consent shall be stated in the petition or a separate declaration. Absent adequate service, the court will not act on the petition within five days absent a showing of good cause for the lack of adequate service. Any filing that seeks a stay shall conspicuously note that request on the cover of the petition.
5. Consistent with Fourth Appellate District Local Rule 1(b), parties to writ proceedings need not file preliminary opposition unless

requested to do so by court order. Except with regard to stays, the court will take no action on a petition other than to deny it without first inviting a response.

6. If the writ panel decides to issue an order to show cause, alternative writ, or writ of review, the matter typically is assigned to a single justice on the writ panel as tentative author. The matter is thereafter treated similarly to an appeal as described below. The orderwill typically direct the clerk to offer the parties the opportunity to request oral argument as described below. Other matters, such as peremptory writs in the first instance and dismissals of appeals, may be resolved by per curiam opinions or orders, with the assistance of central staff.

E. Assignment of Cases to Chambers

The court assigns a monthly allotment of cases to each justice. The number of cases assigned to a particular justice may depend on the size and apparent difficulty of the cases. The assignments usually include a mix of cases in which the parties have selected oral argument and cases in which the parties have waived oral argument. The cases are distributed approximately two months in advance of the calendar to which they are assigned to allow sufficient preparation time.

Panels, including a justice tentatively designated to author the opinion, are generally assigned on a random rotating basis, subject to the presiding justice's responsibility to ensure fair and expeditious resolution of disputes, and to promote access to justice for all members of the public. (Cal. Rules of Court, rule 10.1012; cf. Cal. Rules of Court, rule 10.603(a).) In support of

these fairness and efficiency goals, panels that have previously decided related cases are often reassigned to subsequent matters.

F. Oral Argument and Waiver Thereof, Conferencing of Cases

1. Once the time has passed to file a respondent's brief (or at a similar time in a writ proceeding), the parties are ordered to complete and file a form. The form serves a threefold purpose. First, it provides the opportunity for those parties that have filed briefs to either request or waive oral argument. (See Cal. Rules of Court, rules 8.220(a)(2), 8.360(c)(5)(B), 8.412(d)(1)(B) [respondents that do not file a brief are not entitled to participate in argument].) Second, the form clarifies whether the parties will appear in person for argument or make a remote appearance. Third, the form elicits pertinent information for scheduling oral argument and confirms in writing whether the parties have been served with court orders and notices in this case.
2. Absent extraordinary circumstances, the justices appear in person for oral argument at the court. With regard to the attorneys, the court offers either in person or remote oral argument. No good cause showing is necessary. The parties shall select their preferred method of appearing in the same form they are obligated to file to request or waive oral argument. If remote oral argument is selected, the clerk's office will provide instructions to counsel to appear remotely.
3. Prior to filing their respective forms, the parties are encouraged to meet and confer with regard to whether they will request argument and whether they will appear in person. This may avoid unnecessary motion practice (e.g., situations in which a party either waives or

requests argument, then subsequently requests leave from the court to change their election based on another party's election, or situations in which a remote or in-person appearance is contingent on the other side's intention).

4. Each side is allowed up to 15 minutes for oral argument. Where there are more than two parties, a "side" consists of all parties whose interests are not adverse. If there are more than two parties represented by separate counsel who request oral argument, or if counsel for amicus curiae requests oral argument, the court may apportion or expand the time according to the respective interests of the parties and of amicus curiae. Absent the existence of multiple parties on a single side, five minutes will be allocated to a party that does not request a specific amount of time.
5. If oral argument is requested by a party entitled to it, the case will likely be set for argument within the eight-month period following the date the case is fully briefed. A monthly oral argument calendar is planned and announced a month ahead of time. This court typically schedules argument for the third full week of each month. The parties may advise the court on the form they are required to file of any specific dates they will be unavailable to participate in oral argument. However, the court does not guarantee it will accommodate those conflicts when preparing the oral argument calendar, particularly if the parties request accommodations for the entirety of argument week over the course of several months.
6. Notification of the date and time for oral argument (Cal. Rules of Court, rule 8.256(b)) will be sent to all parties electronically via

thecourt's electronic filing service provider, True Filing, except those parties who are exempt from mandatory e-filing (Cal, Rules of Court, rule 8.71(b)), who will also be sent notification via mail. The parties are responsible for monitoring their email and mail for any notifications from this court.

7. If no party eligible for oral argument requests oral argument, oral argument will be deemed waived. If oral argument is deemed to be waived, the case will be assigned to a panel and submitted for decision following the date the case is fully briefed. (Cal. Rules of Court, rule 8.256(d)(1).)
8. A confidential written summary is prepared by the authoring justice and provided to each panel member prior to oral argument. The panel usually conferences a case before argument occurs and sometimes after argument is completed. Thereafter, a proposed final opinion circulates among the panel members for comments and/or approval. Proposed opinions for cases in which oral argument has been waived generally circulate among panel members without a formal conference. All cases may routinely be discussed among the justices and staff members informally on an as-needed basis.
9. Any post-briefing citation of additional authorities must be made by letter to the court, without further legal argument, and served upon opposing counsel. (Cal. Rules of Court, rule 8.254.) The court retains discretion to strike or disregard untimely citations of authority as they deprive the court and opposing counsel of sufficient opportunity to prepare for oral argument.
10. The court relies on the information provided by the parties in their

oral argument request forms. Significant resources are expended to plan oral argument sessions for the justices and parties. For the convenience of the court and the parties, and to the extent feasible, the court may place in person argument cases and remote argument cases on separate calendar sessions. It is particularly disruptive to the court and opposing parties when the court is asked to change aspects of oral argument calendars after they have been prepared and announced.

11. Parties may file requests to: (a) change their election as to whether to argue in person or remotely; (b) receive more than 15 minutes per side to argue; or (c) continue oral argument. However, any such requests must be made by written application and filed as soon as possible. Any such application must be accompanied by a declaration setting forth good cause, including the reasons for the request, an explanation of any delay in filing the application, and a representation regarding the position of the opposing party or parties with regard to the requested relief. The stipulation of the parties is not sufficient in the absence of a showing of compelling cause. Any requests to continue oral argument or change an aspect of oral argument that are filed fewer than 15 days prior to the scheduled date of argument are particularly disfavored. In addition to the requirements set forth above, such requests filed within 15days of oral argument must describe with particularity in a declaration an emergency necessitating the late relief.

12. When an application to change an election to appear remotely or in person is granted, the other side will be offered the opportunity to

change their election to match that of the successful applicant. When an application for additional argument time for one side is granted, the time allotted to the other side will be similarly enlarged. When an application to continue oral argument is granted, the matter will typically be placed on the next available oral argument calendar.

13. All confidential requests for accommodation at oral argument pursuant to the Americans with Disabilities Act "must be made as far in advance as possible, and in any event must be made no fewer than 5 court days before the requested implementation date. The court may, in its discretion, waive this requirement." (Cal. Rules of Court, rule 1.100(c)(3).)

14. If a case settles after the appellant (or petitioner) receives notice setting the oral argument calendar, the appellant (or petitioner) shall immediately notify the court by telephone (Cal. Rules of Court, rule 8.244(a)(2)) and promptly thereafter file a written notice of settlement and/or request for dismissal as appropriate. Failure to give timely notice of a settlement may result in the imposition of sanctions. (Cal. Rules of Court, rule 8.276.) The court is not required to take a case off calendar or dismiss the case merely because the parties have settled or the appellant (or petitioner) has requested dismissal. (Cal. Rules of Court, rule 8.244(c)(2) ["the court may dismiss the appeal"].)

G. Submission of Cases and Decision

Cases that are orally argued are normally submitted at the conclusion of argument. Where oral argument is waived, the case is submitted at the conclusion of the month to which it is assigned to a panel. Submission of

the case triggers the 90-day rule for the filing of the opinion. (Cal. Const., art. VI, § 19.)

SECTION V: SETTLEMENT

A. Notice of Settlements.

The settling appellants (or petitioners) shall immediately serve and file notices of settlement of any pending civil appeal or writ proceeding, and telephone the court if the case has been calendared for oral argument. (See Cal. Rules of Court, rule 8.244(a) [other requirements concerning notice of settlements].)

B. Stipulated Requests for Dismissal.

If the record has been filed in this court, counsel should promptly serve and file stipulated requests for dismissal. The stipulation should specify the allocation of costs on appeal and whether the remittitur is to issue immediately. (Cal. Rules of Court, rules 8.244(c), 8.272(c)(1), 8.278.) If the record has not yet been filed in this court, appeals should be abandoned in the superior court. (Cal. Rules of Court, rules 8.244(b), 8.316, 8.411.)

C. Stipulated Requests for Reversal. (Code Civ. Proc., §128, subd. (a)(8).)

Stipulated requests for a reversal of the judgment ordinarily are heard by the writ panel unless the appeal already has been assigned to a panel for decision.

1. GOOD CAUSE. The parties must provide a sufficient showing to satisfy the statutory criteria in Code of Civil Procedure section 128, subdivision (a)(8). A copy of the judgment shall accompany the motion.

2. JOINT DECLARATION. The motion shall include a joint declaration of counsel that (1) describes the parties and the factual and legal issues presented at trial; (2) indicates whether the judgment involves important public rights or unfair, illegal or corrupt practices, or torts affecting a significant number of persons, or otherwise affects the public or a significant number of persons not parties to the litigation (if the judgment is against a state licensee, the declaration must also disclose whether it exposes such person to any possible disciplinary proceeding); (3) discloses whether the judgment sought to be reversed may have collateral estoppel or other effects in potential future litigation and, if so, whether any third parties who might be prejudiced by stipulated reversal of the judgment have received notice of the motion; and (4) discloses whether the judgment involves discretionary determinations by the trial court that cannot be reversed by stipulation of the parties alone without independent appellate review.

3. NOTICE TO PARTY. The joint declaration shall include a certification that a copy of the stipulation and joint declaration has been delivered to the parties. The certification need not include the address of the parties notified. In a class action, the copy required need be delivered to only one represented party.

D. Settlement Conferences

Although the court discontinued its formal Judicial Settlement Program (pursuant to Misc. Order 2011-04, entered July 11, 2011), the presiding justice retains discretion to facilitate ad hoc settlement conferences in appropriate cases.