

# **INTERNAL OPERATING PRACTICES AND PROCEDURES FOURTH APPELLATE DISTRICT, DIVISION THREE**

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## **SECTION I INTRODUCTION**

This document describes internal operating practices and procedures of this court. These practices and procedures supplement the statutes, California Rules of Court, and 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 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 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)—They also act as counsel for the clerk's office and

assist in the evaluation of cases.

The assistant clerk/court executive officer supervises the court's administrative staff under the direction of the presiding justice. The court's administrative staff consists of deputy clerks, a librarian, court systems administrators, and office assistants.

### **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 file a stipulation of non-opposition from the other party or parties.
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 10.603(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 10.603(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 final 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 submission of the matter to the writ panel for a decision.

4. 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. 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. Appeals – Oral Argument and Decision.

1. When the respondent's brief is filed (or the time expires for the filing of a respondent's brief), the clerk's office sends out a notice to the parties who have appeared to give them an opportunity to request oral argument. (Cal. Rules of Court, rules 8.220(a), 8.256(c).) 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. Any request for additional time for oral argument must be made by written application submitted to the court within 10 calendar days of the date of the order setting oral argument. The application must be served contemporaneously on all other parties and must specify the amount of time requested and the issues to which additional oral argument will be addressed. When an application is granted, the time allotted to the other side or sides will be similarly enlarged.

2. Cases are generally scheduled for oral argument once briefing is completed and in order of the requests for argument. Statutory priorities are enforced, and parties claiming calendar preference must promptly serve and file a motion for preference. (Cal. Rules of Court, rule 8.240.) Non-oral argument cases are similarly assigned once briefing is completed and in order based on the date oral argument is waived. 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 10.603(a).)

3. A confidential written summary is prepared by the authoring justice and provided to each panel member prior to oral argument. The panel usually conferences on 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.

4. A monthly oral argument calendar is planned and announced a month ahead of time. Oral argument dates are typically scheduled for the third full week of each month.

5. All requests for continuances of oral argument must be in writing and contain a particularized showing of compelling circumstances. The written request must inform the court of opposing counsel's position regarding any continuance. No request will be forwarded to the presiding justice until the court is made aware of opposing counsel's position. Counsel's stipulation to continue oral argument is not sufficient in the absence of a showing of compelling cause. Oral argument continuance requests are particularly disfavored if they are filed fewer than 15 days prior to the scheduled date of argument.

6. The court conducts in-person oral argument in all cases in which argument has been requested and the presiding justice will grant permission to appear remotely upon written request. If a party requests a remote appearance the opposing party will be offered the opportunity to appear remotely. Remote appearance requests are particularly disfavored if they are filed fewer than 15 days prior to the scheduled date of argument.

7. 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.

## **SECTION V SETTLEMENT**

### **A. Notice of Settlements.**

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

### **B. Stipulated Requests for Dismissal.**

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.)

### **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.