

Navigating Riverside's complex departments

By Stacy La Scala

For years, complex civil matters in Riverside County were somewhat randomly distributed to departments throughout the county. Complex cases like construction defect, class actions and Judicial Council Coordinated Proceedings could end up before just about any sitting civil department. However, beginning in 2015, complex matters throughout Riverside have been consolidated into two specially designated complex civil departments, Departments 5 and 10.

While there were many reasons that went into creating designated complex civil departments, hundreds of construction defect matters aging on dockets and a single construction defect trial consuming the better part of five months were likely motivating factors.

As part of the monumental task of restructuring the handling of complex civil matters, both complex departments have provided "guidance" for counsel by way of judicially crafted case management order (CMO) provisions. For counsel that choose to read, understand and follow the court's guidance, the time spent in Departments 5 and 10 can increase the level of their practice to the benefit of both counsel and their clients. However, for those unfamiliar or unable to comply with the court's provisions, the time spent in Riverside can quickly become turbulent.

In fact, both complex departments have determined that the most efficient and effective way to handle complex civil matters is to encourage compliance with their CMO provisions through issuance of orders to show cause, along with recommended sanctions, for those counsel who fail to comply.

For construction defect matters in Department 10, the current and more notable construction defect CMO provisions include, among others:

1. Strict time frames to serve, dismiss and default parties.

2. Restrictions on the amount of time counsel is allowed to grant extensions to respond.

3. Where defense fees are alleged, discovery is specifically allowed, including an allocation and the factual basis of the allocation.

4. Mandatory settlement conferences: The court requires strict compliance with California Rules of Court, Rule 3.1380, (b), which requires: "Trial Counsel, parties and persons with full authority to settle the case must personally attend the conference, unless excused by the court for good cause. If any consent to settle is required for any reason, the party with that consensual authority must be personally present at the conference." The construction defect CMO provisions specifically require attendance of individuals with "Full Settlement Authority," which is partially defined as unconditional authority to accept any amount in settlement or uncondition-



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al authority to offer to settle in an amount equal to the lesser amount of policy limits or the total of all demands made upon that party without the need to consult with someone who is not present.

5. Good faith settlements: Applications pursuant to Code of Civil Procedure Section 877.6(a)(2) are preferred over a noticed motion.

6. Trial setting conferences: Prior to the TSC, all unserved parties need to be dismissed and all served but non-appearing parties need to be defaulted. Failure to dismiss or default consistent with the above results in an order to show cause and sanctions up to \$1,500.

7. Trial readiness conferences: Prior to the TRC and second TRC three weeks prior to trial, counsel must conduct an issues conference pursuant to Local Rule 3401. Topics to be discussed at the TRC are listed in detail in the construction defect CMO provisions.

While there are many similarities between the construction defect CMO provisions of Department 10 and Department 5, the construction defect CMO provisions (in two separate orders) of Department 5 have a significant amount of additional detail. In particular, there are rigorous meet and confer requirements prior to seeking judicial guidance on almost all issues, including demurrers, motions and discovery. Sanctions of up to \$1,500 are specifically referenced in the construction defect CMO provisions where there is a failure to timely serve, dismiss or request entry of default of any outstanding named parties.

Some of the Department 5 construction defect CMO provisions worth noting, include:

1. Objections to the construction defect CMO must be filed within 15 days from initial appearance.

2. A Stay of the prosecution of the case enjoins filing and service of complaints, cross-complaints, complaints in intervention, responsive pleadings and litigating any claim or defense by demurrer, motion or otherwise.

3. Mediation dates must be set on a specific date and reserved with the mediator.

4. The construction defect CMO may only be amended pursuant to court approval.

5. Cross-complainants may only grant a 90-day extension to respond (Department 10 allows 120 days.)

6. Notice of general appearance is ineffective as an appearance.

7. Final defect lists, once filed with the court, substantively amend the allegations in the complaint, including the nature and extent of alleged deficiencies. Absent leave of court, no evidence of any other alleged defects shall be admissible at trial.

8. Case management conference statements need to be filed jointly.

9. Order to show cause hearings: Failure to file a written declaration five days before the hearing constitutes an admission by the responding party that good cause exists for the OSC and imposition of any threatened sanctions.

10. Where an OSC includes sanctions, counsel for the party must both file a timely declaration and appear personally.

11. Mandatory settlement conference recommendations must be submitted at least 30 days prior to the date set.

12. Mandatory settlement conference requirements, including the attendance of counsel, parties and insurance carriers, are detailed and numerous.

Failure of counsel to strictly comply with the construction defect CMO provisions in either department is cause for the issuance of an order to show cause, including sanctions of up to \$1,500. On this note, for those endeavoring to practice in the Riverside Complex Civil departments: pursuant to Business and Professions Code Section 6086.7(a)(3), "A court shall notify the State Bar of the imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000)."

In sum, in order to smoothly navigate the new complex departments, read the construction defect CMO provisions in detail and ensure strict compliance. Not only will you avoid an OSC with you or your client's name on it, but your standards of practice will become more sophisticated, benefiting both yourself and your client.



LA SCALA

Stacy La Scala is a mediator, special settlement conference referee and arbitrator with JAMS. He can be reached at slascal@jamsadr.com.