

CASE MANAGEMENT CONFERENCE POLICY & INFORMATION

I. INTRODUCTION

Welcome to Merced Superior Court's Case Management Conference (or "CMC") Program. CMCs are public hearings between the parties and the Court, usually taken in an office setting, designed to monitor the status of a case in order to ensure adequate progress is being made by all parties. Generally, parties at CMCs report on whether all Complaints and Answers have been filed, the status of discovery including written discovery requests and depositions, and the possibility of the parties engaging in Alternative Dispute Resolution ("ADR") procedures such as arbitration, mediation or neutral case evaluation. The final purpose of a CMC is to determine the parties' readiness for trial and to assign reasonable mandatory settlement conference and trial dates. After each CMC hearing, the Court issues and serves on all parties a CMC Findings & Order ("CMC F&O") reflecting the findings made at the CMC and any instructions on how the parties are to proceed.

The information being provided here is designed to take you through the CMC process and answer most commonly asked questions. This information is broken down into logical steps, namely, what you generally need to know and do (1) before the CMC, (2) at the CMC, and (3) after you achieve resolution of your case.

Additional information is available from the Court's website (www.merced.courts.ca.org), the California Rules of Court (<http://www.courtinfo.ca.gov/rules>), the California Code of Civil Procedure (<http://www.leginfo.ca.gov/calaw.html>), and the Court's Local Rules (<http://www.merced.courts.ca.org>).

II. BEFORE THE CMC

Plaintiff is to serve the Complaint within 60 days per California Rules of Court, Rule 3.110, and bring the case at issue (Complaint answered) thereafter, absent the filing of a Demurrer. Extensions to respond to the Complaint may only extend 15 days beyond the 30 days allotted without leave of Court; **open-ended extensions are not valid**.

Before the first CMC, Parties are obliged to Meet and Confer, file and serve a CMC Statement, and participate in the Court's Early Mediation Program.

Early Mediation Program

All Unlimited Civil cases are assigned to the Court's Early Mediation Program ("EMP"). As part of their duties to meet and confer, parties are to review the Court's Alternative Dispute Resolution ("ADR") Information Guide (available at www.merced.courts.ca.org) and discuss what types of ADR procedures, in addition to or in place of Early Mediation, appear beneficial to achieving resolution. To that end, attorneys are to obtain their client's consent to any ADR procedures contemplated **before the hearing on the CMC**. Where a case appears amenable to Judicial Arbitration and the parties: (1) opt out of Early Mediation, and (2) do not stipulate to another form of ADR, the case will generally be ordered to Judicial Arbitration within 60 days (or within 90 days, if good cause is shown). Parties are to comply with all assigned and/or stipulated ADR completion dates.

When a case is to undertake Early Mediation, Plaintiff collects the \$300 EMP fee, submits it to the Civil Clerk's Office, and the parties then select a Mediator from the Court's ADR Neutral Panel, available on the Court's website www.merced.courts.ca.gov. **Early Mediation must be completed before the first CMC**, unless an Opt-Out Form is filed within the first 120 days the Complaint has been pending. Further details on the Court's EMP may be found in the ADR Guide, also available on the Court's website.

Parties' Meet and Confer

At least 30 days prior to the CMC, parties are to meet and confer per Cal. Rules of Court, Rule 3.724, and discuss:

- Discovery disputes/schedules
- Facts and issues that are uncontested and those in dispute
- Motions pending or anticipated
- Settlement of the case
- Trial scheduling

CMC Statement

No later than 15 days before the CMC, parties are to COMPLETELY fill out and file a CMC Statement (Form CM-110) available on-line at www.courtinfo.ca.gov. The CMC Statement must also be served on all parties.

Case Designation and Status

Commensurate with the Trial Court Delay Reduction Act, cases are automatically presumed to be Category I type cases (12 month duration). Upon an appropriate showing at the CMC Hearing, cases may be designated Category II (18 month duration) or Category III (24 month duration). Trial dates will be set accordingly absent any stays or other constraints.

PARTIES ARE TO TAKE EVERY REASONABLE EFFORT TO ENSURE THEIR CASE IS "AT ISSUE" BY THE FIRST CMC HEARING, WHICH IS SET APPROXIMATELY 150 DAYS FROM THE FILING OF THE ORIGINAL COMPLAINT. "AT ISSUE" MEANS THAT THE COMPLAINT HAS BEEN PROPERLY SERVED ON ALL DEFENDANTS, ALL PROOFS OF SERVICE HAVE BEEN FILED WITH THE COURT, AND EACH DEFENDANT HAS FILED A RESPONSIVE PLEADING (e.g. AN ANSWER OR DEMURRER). FAILURE TO BRING A CASE AT ISSUE BY THE FIRST CMC MAY RESULT IN THE CASE BEING REFERRED FOR AN ORDER TO SHOW CAUSE ("OSC") RE DISMISSAL AS TO ANY UNSERVED PARTIES.

III. APPEARING AT THE CMC

All Parties must appear at scheduled CMC hearings (either telephonically or in person). Only trial counsel or counsel thoroughly prepared to discuss the case and authorized to commit to discovery, ADR and trial issues should appear at CMC hearings. FAILURE TO APPEAR AT A SCHEDULED CMC HEARING MAY RESULT IN WAIVER OF A PARTY'S RIGHTS (such as the right to a jury trial), SANCTIONS, AND POSSIBLE DISMISSAL OF THE ENTIRE ACTION.

Appearing in Person

Parties may appear in person for Case Management Conferences by reporting to Courtroom 8 at 627 W. 21st Street, Merced, CA 95340. All CMC's are scheduled on Thursdays at 9:30am.

Appearing by Telephone

Parties are also welcome to appear telephonically by complying with Cal. Rules of Court, Rule 3.670, Merced Superior Court Local Rules, Rule 4, and by making timely arrangements with CourtCall, LLC. CourtCall, LLC may be reached at: (888) 882-6878. Parties may give notice of their intent to appear by telephone by indicating "TELEPHONIC APPEARANCE REQUESTED" on their CMC Statements filed at least 15 days before the CMC, or by independently filing with the Court a Request for Telephonic Appearance, NOT LESS THAN THREE (3) COURT DAYS, prior to the Case Management Conference. The initial Notice of Telephonic Appearance will be deemed valid as to any continued CMC Hearings scheduled thereafter. Parties are to inform CourtCall of the specific Judge, Commissioner or Temporary Judge assigned to hear the CMCs in your case. All parties dialing into courtcall will be placed on hold and connected to the courtroom once the case is called for hearing.

Consolidated Matters

Once a case **is ordered** consolidated by the trial court, Parties are relieved from appearing at scheduled CMC hearings in **non-lead matters**. All further CMCs in non-lead matters are taken off calendar automatically by the Court.

Assignment of Temporary Judge

CMCs are typically heard by Temporary Judges whom are qualified members of the California State Bar. Pursuant to Cal. Rules of Court, Rule 2.816, all parties have the right to have their CMCs heard by a Judge or Commissioner, if requested. Unless one or more of the parties make their request for a Judge or Commissioner known at the time of the hearing or before, **THE CMC WILL LIKELY BE HEARD BY A TEMPORARY JUDGE.**

IV. RESCHEDULING A CMC

Rescheduling CMCs is generally disfavored because:

- Parties and Counsel may conveniently appear telephonically and make any needed request at that time;
- Continued CMCs are generally scheduled with the Party's and Counsel's availability in mind; and
- Rescheduling a CMC may benefit one party, but can be detrimental to other parties, and therefore requires proper notice and/or a stipulation.

In no case will CMCs be rescheduled based on the written or telephonic request from a single party. **PARTIES ARE NOT TO MAKE SUCH EX PARTE REQUESTS.** Parties desiring to reschedule a CMC, notwithstanding the above, are to either:

- 1) File and serve a stipulation executed by all parties and appear *ex parte* in the trial court; or
- 2) File a fully-noticed motion with the trial court requesting the CMC be rescheduled.

V. REPORTING SETTLEMENT

A continued CMC will be ordered up and until a matter is finally disposed of by dismissal of the **entire action** or by entry of final judgment **as to all parties** (including Doe Defendants). Even where cases are near resolution, a further, continued CMC is generally ordered to make certain final disposition of the matter is properly undertaken. Appearing at the continued CMC is important because, (1) initial settlement accords do not always result in final disposition of the matter, and (2) after achieving resolution, the parties may fail to file the required papers to confirm final disposition of the matter. Accordingly, the mere reporting of a settlement is not sufficient to take a CMC off calendar.

However, where the Parties, at least five (5) Court days before a scheduled CMC, file an **Unconditional Notice of Settlement** per Cal. Rules of Court, Rule 3.1385 requiring dismissal of the entire action within 45 days, the Court will automatically continue the CMC on its own motion, without the need for the Parties to appear, to a date after the 45-day period. Failure to have disposed of the entire matter by the time required will result in the matter being set for an Order to Show Cause re Dismissal given the mandatory language of Cal. Rules of Court, Rule 3.1385. Any other filing indicating settlement requires the appearance of the Parties at any previously scheduled CMC.