
Complex Civil Guidelines

GUIDELINES AND PROTOCOLS

COMPLEX CIVIL LITIGATION DEPARTMENT

Welcome to the Complex Civil Litigation Departments of the Superior Court of California, County of Santa Clara. Ours is one of few Superior Courts selected by the California Judicial Council where case management principles designed to reduce the time and expense normally associated with complex civil litigation cases have been employed.

Counsel's familiarity with the applicable *California Rules of Court*, *Local Rules – Superior Court of California, County of Santa Clara* and the *Deskbook on the Management of Complex Civil Litigation* is expected. In addition, familiarity with these guidelines and protocols will answer common procedural questions and should assist you in your appearances in this Department. ***Note: These Guidelines and Protocols are revised from previous versions. Your thoughts and suggestions are always welcome. Significant practice highlights include:***

The website for the Complex Departments is now integrated into the Court's site, www.scscourt.org.

Tentative rulings on motions of all types are posted online by 2:00 p.m. the day prior to the hearing, and, unless an objection is properly raised by 4:00 p.m. the day prior to the hearing, the ruling will automatically become the Court's order the next day. For specific information, go to: http://www.scscourt.org/online_services/tentatives/tentative_rulings.shtml and select the appropriate department.

Ex parte hearings require advance reservation with the Coordinator. Letter briefs are not acceptable.

Case management conference statements are to be in a combined format; see VII. 3.

No discovery motions may be filed until the parties have meaningfully met and conferred AND met with the Court for a face-to-face Informal Discovery Conference.

The Court requires detailed JOINT pre-trial statements in advance of a pre-trial conference where counsel are expected to make concrete suggestions as to efficient trial management; see XI.

Complex Civil Guidelines

**PLAINTIFF MUST SERVE A COPY OF THESE GUIDELINES
WITH THE SUMMONS AND COMPLAINT.**

TABLE OF CONTENTS

I.	CONTACT INFORMATION	3
II.	INTRODUCTION.....	3
III.	COURTROOM DEMEANOR, CONDUCT AND ETIQUETTE.....	4
IV.	GENERAL MATTERS.....	4
V.	EX PARTE APPLICATIONS	5
VI.	DISCOVERY	6
VII.	LAW AND MOTION	6
VIII.	CASE MANAGEMENT CONFERENCE	7
IX.	CASE MANAGEMENT AND REFERENCE ORDERS	8
X.	MANDATORY SETTLEMENT CONFERENCES (MSC)	8
XI.	MINI-TRIALS	9
XII.	PRE-TRIAL CONFERENCE	9
XIII.	TRIALS - GENERALLY.....	13
XIV.	TRIAL EXHIBITS.....	18
	CURRICULUM VITAE FOR JUDGE BRIAN C. WALSH	20
	CURRICULUM VITAE JUDGE THOMAS E. KUHNLE.....	22

Complex Civil Guidelines

I. CONTACT INFORMATION

Departments 1 and 5 – Downtown Superior Courthouse, 191 N 1st Street,
San Jose, CA 95113.

Department 1:

Judge	Hon. Brian C. Walsh	408-882-2110
Courtroom Clerk	Jee Jee Vizconde	408-882-2113
Bailiff and Deputy Sheriff	Frankie Taranto	408-882-2111

Department 5:

Judge	Hon. Thomas E. Kuhnle	408-882-2150
Courtroom Clerk	Jessica Crabtree	408-882-2153
Bailiff and Deputy Sheriff	Daniel Enright	408-882-2151

Coordinator for Complex Rowena Walker 408-882-2286 rwalker@scscourt.org

E-Filing Web Site: http://www.scscourt.org/forms_and_filing/efiling.shtml

II. INTRODUCTION

Complex cases suitable for assignment to the Complex Civil Litigation Department are defined in [Rule 3.400](#), California Rules of Court (“Rules” or CRC). Cases will be assigned to the Complex Civil Litigation Department, **for all purposes, including discovery and trial**, by the Court’s own motion, or on application of any of the parties, pursuant to the procedures specified in Rule 3.400. Applications for complexity determination shall be heard in the Complex Civil Litigation Department. It is within the Court’s discretion to accept or reject a case for complex designation.

In general, cases assigned to the Complex Civil Litigation Department will be managed in accordance with the principles set forth in the *[Deskbook on the Management of Complex Civil Litigation](#)* (“Deskbook”).

Complex Civil Guidelines

III. COURTROOM DEMEANOR, CONDUCT AND ETIQUETTE

1. The Court expects formality, civility and proper decorum at all times. Witnesses and parties are to be addressed and referred to by their surnames. **COURTESY AND RESPECT TOWARDS EVERYONE IN THE COURTROOM IS REQUIRED.** Advise all witnesses and parties to observe appropriate courtroom demeanor and punctuality. The civil and courteous treatment of courtroom staff and opposing counsel is a paramount professional obligation of counsel.
2. All pagers, cell phones and other audible electronic devices must be **TURNT OFF** while in the courtroom whether or not court is in session.
3. Do not approach the clerk or reporter while court is in session for any reason.
4. Objections, statements and arguments must be addressed to the Court rather than opposing counsel. Counsel may speak from the lectern (if present) or the counsel table. Counsel must stand when objecting or addressing the Court. Counsel may approach any witnesses as necessary only with leave of Court.
5. At the end of each day, counsel must clear work areas including the area in the rear of the courtroom.
6. Use of the department's copier or telephone requires the Court's permission.
7. It is counsel's responsibility to note the date and time set for any future hearing. Hearing dates are set by contacting the Coordinator.
8. Courtroom staff will not make copies at counsel's request unless directed to do so by the Court. Copy work completed by courtroom staff is subject to the current per-page copy fee.
9. If a peremptory challenge or challenge for cause is upheld, the case will be referred to the Civil Supervising Judge for reassignment.

IV. GENERAL MATTERS

1. The Court expects all counsel to maintain regular communication with each other regarding hearing dates, progress of the case, and settlement possibilities. A condition of remaining in the complex department is that counsel will behave toward all counsel and other participants with

Complex Civil Guidelines

civility, courtesy and professionalism, both in and out of Court. Meeting and conferring with opposing counsel on both procedural issues as well as substantive issues is mandated.

2.

3. Continuances of hearing or trial dates are discouraged but may be necessary from time to time. Continuances of hearings and trial dates by stipulation are not permitted without prior approval of the Court, and only to a date pre-approved by the Court. Please call the Coordinator for available dates before contacting other counsel. If preliminary approval is given, a written stipulation must be provided before the hearing or trial date. Faxed signatures on stipulations are permitted.

4. In the event a case settles prior to a court hearing or trial date, parties must telephonically notify the Court as soon as the disposition is agreed upon and must file with the Complex Litigation Department either a Notice of Settlement, Request for Dismissal, a Stipulation for Entry of Judgment or a Judgment on Stipulation that is ready for the Court's signature. If the applicable document is not ready, counsel must appear at the time scheduled for hearing and recite the settlement for the record.

5. Cross-complainants must serve a copy of these guidelines upon any new parties and give notice of any scheduled hearings and depositions at the time the cross-complaint is served.

6. All actions classified as complex or provisionally complex are subject to the Court's Electronic Filing and Service Standing Order, unless exempted by order of the Court for good cause. Further information is posted on the Court's website at

http://www.sccourt.org/forms_and_filing/efiling.shtml.

V. EX PARTE APPLICATIONS

1. Ex parte appearances are discouraged except in unusual situations. Hearing dates must be coordinated with the Complex Coordinator. Strict compliance with CRC Rules 3.1200-3.1207 is required. In addition, the ex parte application and all supporting papers, including any proposed pleading, motion or order shall be electronically submitted to the Court's website by noon the Court day prior to the scheduled ex parte hearing date.

2. The Court is eager to assist counsel when specific problems arise that may not require a formal motion. To arrange a conference with the Court when all counsel agree to the advisability of such a discussion, please contact the Coordinator to reserve a time for the conference. In these instances "letter briefs" are not acceptable, but briefs on court pleading paper not exceeding 3 pages may be submitted. The Court prefers the briefs be lodged via the Court's efilng website at

Complex Civil Guidelines

http://www.sccourt.org/forms_and_filing/efiling.shtml at least two court days in advance of the scheduled conference.

3. Though the Court prefers personal appearances by counsel, counsel may appear by telephone, with the Court's prior permission, at counsel's expense.

VI. DISCOVERY

1. The Court believes in open discovery in accordance with the law, but expects counsel to refrain from engaging in excessive and abusive discovery.

2. Discovery meet and confer obligations require an in-person conference between counsel. If a resolution is not reached, parties are required to meet and confer in person with the Court for all discovery-related hearings **prior to filing of any discovery motion, unless otherwise authorized by the Court**. Each side must serve and lodge a short brief, **limited to no more than 3 pages**, two court days in advance of the meeting. To schedule an informal discovery conference (IDC) with the Court, please contact the Coordinator.

3. **Any dates given by the Court relating to this IDC process have no impact on statutory deadlines for filing motions or any other papers, including, but not limited to, the 45-day deadline for filing a motion to compel further responses. The party that files a discovery motion must address the motion's timeliness in its moving papers.**

VII. LAW AND MOTION

1. Law and Motion matters are generally heard Fridays at 9:00 a.m.

2. Counsel must first clear the hearing date with the other parties prior to contacting the Coordinator. You must provide the Court with the name of the case, the case number, type of hearing, hearing date requested and name and telephone number of the filing attorney.

3. Prior to the hearing of **any** motion, petition or application all counsel and parties representing themselves shall communicate in a good faith effort to eliminate the necessity of the hearing.

Complex Civil Guidelines

4. The Court values the importance of the training of the next generation of trial lawyers, which must include substantive speaking opportunities in court. The Court strongly encourages the parties and senior attorneys to allow the participation of junior lawyers in all court proceedings, particularly in arguing motions where the junior lawyer drafted or contributed significantly to the motion or opposition.

5. Motions or applications to seal must be heard no later than any motion relying on the materials for which sealing is sought. Upon denial of a motion or application to seal, the moving party must notify the Court that the materials are to be filed unsealed (CRC Rule 2.551(b)(b)) or refrain from relying on the materials, which will not be part of the record.

6. When the Court sustains a demurrer or grants a motion to strike with leave to amend and an amended pleading is filed, the plaintiff or cross-complainant shall file with its opposition to any successive demurrer or motion to strike a redline comparing the amended pleading to the previous version of the pleading.

7. Counsel for moving parties must notify the Court as soon as possible regarding any matter to be taken off calendar or continued. Notice of continuances of hearings must be provided by the moving party.

VIII. CASE MANAGEMENT CONFERENCE

1. The first case management conference is generally scheduled one hundred twenty (120) days after the action is filed. Plaintiff is required to give notice of this conference date to all other parties.

2. Case Management Conferences are generally heard Fridays at 10:00 a.m. and are scheduled as necessary to monitor the progress of the case and to assist counsel and the parties as the matter progresses. The parties should expect the Court to schedule a status conference approximately every 120 days.

3. Judicial Council Form CM-110, Civil Case Management Statement (required by CRC 3.725(c)), is not well-suited for complex cases. Instead, the parties shall file a joint case management statement no later than five calendar days prior to the hearing for each conference addressing the following subjects:

- (a) a brief objective summary of the case,
- (b) a summary of any orders from prior case management conferences and the progress of the parties' compliance with said orders,
- (c) significant procedural and practical problems which may likely be encountered,
- (d) suggestions for efficient management, including a proposed timeline of key events, and

Complex Civil Guidelines

(e) any other special consideration to assist the Court in determining an effective case management plan.

A status conference statement may be filed as an alternative to the case management statement when appropriate. A status conference statement is generally less detailed than a case management statement and is to be used to advise the Court of progress or developments in the case which have occurred since the last review hearing.

IX. CASE MANAGEMENT AND REFERENCE ORDERS

1. Case Management Orders are not required in all cases, but may be helpful in cases where the sequencing and timing of key events are necessary in the management of the litigation and preparation of the case for trial. However, even if a case management order is not necessary in a particular case, all complex cases must be managed by counsel, or the court, or both.
2. Mediation and Reference matters should not commence until all parties are before the Court but not later than six months after the original complaint was filed, except for good cause.
3. Mediation and Reference matters should be concluded 12 months after their initiation (approximately 18 months after the original complaint was filed), except for good cause.
4. Brevity in drafting the Order may help focus your case and assist in reaching the desired goal (i.e., early informed resolution of your case in a cost-effective manner).
5. After a date is scheduled with the Court, it may not be continued by stipulation of the parties without the Court's consent.

X. MANDATORY SETTLEMENT CONFERENCES (MSC)

1. If there is an objection to the trial judge's participation in the mandatory settlement conference, counsel must advise the Court as soon as possible, and in no event, later than the date the MSC is set. No case will be tried before a good faith effort is made to settle. Mandatory settlement conferences set on the court's calendar are typically set at the time the trial is set, and generally, the final mandatory settlement conference takes place a week to two weeks before the first day of trial, typically on a Wednesday.
2. Trial counsel, parties and persons with full authority to settle the case must personally attend unless excused by the Court. If insurance coverage is available to satisfy the plaintiff's settlement demand and a representative of defendant's insurer with full settlement authority attends the mandatory settlement conference with defendant's trial counsel, named defendants need not attend

Complex Civil Guidelines

unless their personal consent is necessary to settle the case. Named defendants must also personally attend the mandatory settlement conference when (a) there is an insurance coverage dispute; (b) plaintiff seeks to recover damages not covered by insurance; or (c) plaintiff's demand exceeds insurance policy limits. Failure to appear will result in the imposition of sanctions. Settlement Conference Statements must be filed at least five (5) court days before the scheduled conference (Rule 3.1380).

3. Any request for a waiver of the requirement to personally appear at the MSC, whether conducted by the Court or a special master, must be made by written application to the Court.

XI. MINI-TRIALS

There may be a pivotal issue, such as a special defense or evidentiary ruling, upon which the rest of the case depends. If counsel agree, the Court will set aside time before or during the trial to hear mini-trials on such issues. Time will be appropriately limited. Briefs and factual stipulations must be submitted in advance. Limited testimony may be taken, for example, as in an Evidence Code § 402 situation. Contact the Coordinator to schedule a date and submit a stipulation signed by all counsel.

XII. PRE-TRIAL CONFERENCE

There will be a detailed pre-trial conference 10-15 days before trial to discuss procedural issues and preliminary matters in order to make the trial process as predictable and smooth as possible.

The conference may be a time for the Court to discuss trial evidence presentation and use of audio-visual equipment. The conference is not for the purpose of hearing motions in limine. An example of an issue for the conference: Product liability case in which the manner of presenting the underlying case is of concern. Will the Court allow counsel to read the transcript into the record? Live testimony? A combination of transcript and live testimony? Is a trial by jury requested?

At least 10 days before the pretrial conference, counsel shall meet and confer and execute necessary documents listed below. Counsel shall meet in person at a mutually agreeable time and location.

At the meet and confer, the parties shall:

Complex Civil Guidelines

1. Prepare a **Joint Statement of the Case**.
2. Prepare a **Joint Witness List**, excluding impeachment or rebuttal witnesses, with accurate time estimates.

Witness lists should not be exaggerated. Only witnesses that a party expects to actually call should be listed, with a brief synopsis of the proposed testimony. In addition to the list contained in the statements, each list should also be prepared in the form attached as follows. Witnesses should be listed last name first. Titles (e.g. Dr., Officer) should be placed after the comma following the last name. This is so that lists can be sorted correctly.

As noted above, Counsel should include in their witness list the amount of time they expect to spend on direct examination of each witness. The amount of time should be stated in minutes (*not* days or hours). Counsel must also be prepared to state at the conference how much time they will require for cross-examination of each witness identified on the other party's list.

At the conference the Court will make separate arrangements for the preparation of a joint list, for jury selection purposes, of possible witnesses and persons or entities who might otherwise be mentioned at trial.

Format for Witness Lists

Plaintiffs' List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Smith, John	P	20	30	5	55	Formation of contract
Brown, Nancy	P	15	20	5	40	Breach of contract
White, Ron	P	70	10	15	95	Damages
Black, Peter	P	60	30	15	105	Formation of contract
	P	120	100	30	250	Damages

Complex Civil Guidelines

Garcia, Dr. Ruth						
Rogers, Officer Ted	P	60	30	10	100	Arrest of Susan Petersen

Complex Civil Guidelines

Defendant's List

Witness	Party (P or D)	Direct (min.)	Cross (min.)	Redirect (min.)	Total	Subject
Doe, Edward	D	20	10	5	35	Formation of contract
Chang, Sam	D	75	30	15	120	Damages
Martin, Dr. Eric	D	120	60	30	210	Damages

3. Exchange **exhibits** and inspect photos and diagrams (to be submitted on the date of trial), excluding those contemplated to be used for impeachment or rebuttal. **Stipulate to all facts amenable to stipulation.**
4. Prepare a **Joint List of Controverted Issues**. If all the parties fail to agree to an issue as controverted or uncontroverted, then the issue is controverted. (Required for both jury and non-jury trials).
5. Exchange all **motions** in limine.
6. Prepare **voir dire questions** for the Court to include when examining the panel.
7. Execute the **Statement of Compliance** indicating counsel has complied with the Local Rules and these Guidelines.
8. Prepare joint proposed **jury instructions** (CACI only) and verdict forms, and exchange disputed instructions.

The above items, including opposition to motions in limine, trial briefs and the Statement of Compliance signed by all counsel, shall be submitted to the Complex Civil Litigation Coordinator or to the courtroom clerk in the department of the judge to whom the case has been assigned for trial, **no later than noon on the 1st court day before the date set for trial.**

Complex Civil Guidelines

XIII. TRIALS - GENERALLY

1. **General Matters – the following applies to all trials (jury and non-jury):**

- a. Trials generally will proceed four days a week as follows: Monday through Thursday (9:00 a.m. to 4:30 p.m.). The Court will provide the parties, generally at the conclusion of the Mandatory Settlement Conference, a proposed trial schedule.
- b. Jury deliberations will proceed five days a week, from 9:00 a.m. to 4:30 p.m.
- c. Trial attorneys should be in the courtroom 30 minutes prior to the start of each morning session, unless another time is agreed upon by the Court. Counsel should expect that the court will take appropriate action if counsel is late for any appearance and does not have a justification for a late appearance.
- d. Before rearranging tables or other courtroom furniture, or installing equipment such as projectors or screens, permission must first be obtained from the bailiff or the Court.
- e. Unless the Court expressly advises otherwise, counsel may not approach a witness who is testifying to hand the witness exhibits, or to help the witness locate portions thereof, without first obtaining the Court's permission.
- f. Counsel must advise opposing counsel and the Court of the identity of each witness intended to be called by 4:30 p.m. the day preceding the time for the witness or witnesses to testify.
- g. Counsel presenting their case shall be expected to have witnesses ready to call through at least 4:30 p.m., and may be deemed to have rested their case if they are not prepared to proceed. Counsel shall advise the Court immediately of any circumstances which may prompt a request for a modification of the established trial schedule.
- h. Counsel should advise the Court at the outset of the proceedings, or as soon as the issue becomes apparent, of any legal issues or evidentiary matters that counsel anticipate will require extended time for consideration or hearing outside the presence of the jury.
- i. If during the course of trial, counsel wish to discuss a matter with the Court and opposing counsel outside of the presence of the jury, counsel **MUST** advise the Court of this request at the conclusion of the preceding court session and **NOT** immediately before proceedings are scheduled to resume.

Complex Civil Guidelines

- j. The amount of jury fees required to be posted in advance of a jury trial is \$150.00. CCP §631(b). If a case settles after jury fees have been deposited, the jury fees will not be returned unless the Court is notified of the settlement by 2:00 p.m. on the court day preceding the trial date for which the deposit was made.
- k. The court reporter per diem fees in civil proceedings lasting one hour or less is \$30. GC 68086(a)(1)(A). The court reporter per diem fees in civil proceedings lasting more than one hour are \$350 for half-day, or \$700 for full day. GC 68086(a)(1)(B).
- l. Counsel must confer in advance of the trial, attempt to stipulate on as many issues and facts as possible, and reduce all stipulations to writing. The written stipulation is filed and during jury trials is read aloud into the record.
- m. **The Court strongly encourages the parties and senior attorneys to permit junior lawyers to have an important role at trial, including the examination of witnesses.**

2. Documents

Unless the case was settled at the Mandatory Settlement Conference or dismissed in full prior thereto, or unless otherwise ordered by the Court, the following items must be lodged in the department of the trial judge or, if none, with the Complex Civil Coordinator, and served on all other parties by noon on the last court day before the date set for trial:

- (1) all in limine motions and a list of the in limine motions;
- (2) exhibit lists/indices, except impeachment exhibits;
- (3) witness lists, except impeachment witnesses, and unusual scheduling problems; each witness listed shall include a succinct (no more than one or two sentences) statement of the general subject matter of the witness' testimony and an estimate of the time that will be required for the direct examination of each such witness;
- (4) jury instruction requests, except for instructions that cannot reasonably be anticipated prior to trial;
- (5) proposed special verdicts;
- (6) any stipulations on factual or legal issues;

Complex Civil Guidelines

(7) a concise, non-argumentative statement of the case to be read to the jury in jury trials;

(8) trial briefs;

(9) the original of all deposition transcripts to be used during the course of the trial. If counsel anticipates reading from the deposition transcript for any purpose other than impeachment, counsel must deliver to opposing counsel a written specification of the pages and lines proposed to be read.

An extra copy of all the above documents (except deposition transcripts) shall be delivered to the courtroom clerk on the morning of the trial for use by the clerk.

Counsel seeking to display to the jury any exhibit which required time and equipment to observe, such as slides, transparencies, movies, videotapes and audiotapes, MUST make such exhibit available to opposing counsel for review prior to commencement of the session of court at which the exhibit will be used. Proceedings will not be delayed to permit such a review if the review has not occurred by the time court is scheduled to begin.

3. Technology

Counsel must meet and confer regarding the use of computers, projectors, screens and other forms of equipment for showing evidence to the jury or Court. Counsel must confer with court staff regarding the placement and use of any such equipment.

4. Stipulations

Prior to the commencement of trial, all counsel will be requested to stipulate:

1. At the commencement of each session of the Court, all parties, attorneys and jurors are present unless otherwise indicated.
2. After the first occasion on which the jury has been admonished not to discuss or prejudge the case in conformity with CCP § 611, the jury will be deemed to have been so admonished at every subsequent recess or separation without the need for further admonition; and
3. Reporting of juror voir dire and jury instructions are waived.

Complex Civil Guidelines

5. Opening and Closing Arguments

- a. Counsel should avoid discussing routine matters of court procedure, such as the sequence of trial, in opening statements and closing arguments. These matters will be covered by the Court and need not be repeated by counsel.
- b. Do not display charts, diagrams or proposed exhibits to the jury until they have been shown to opposing counsel outside of the presence of the jury. If opposing counsel indicates no objection, the exhibits or other object may be displayed to the jury without first requesting Court approval. If opposing counsel objects, the exhibit or object may not be displayed without Court approval, which must be requested outside the presence of the jury.

6. Examination of Witnesses

- a. Objections: Counsel should only state the legal ground(s) of objection and, unless the Court specifically requests explanation or argument, should refrain from argument, elaboration, or any other form of extended objection-making. Counsel may request permission to approach the side bar to present argument, but should not approach unless and until the Court grants the request.
- b. When calling a witness to testify under Evidence Code section 776, do not announce in the presence of the jury that the witness being called under this provision or as a “hostile” or “adverse” witness. Simply proceed with the examination of the witness; the Court will rule upon the applicability of section 776 only if such a ruling is required by an objection asserted by opposing counsel.
- c. Do not propose a stipulation to opposing counsel in the hearing of the jury unless there is prior agreement of counsel.

7. Transcripts

- a. The court reporter is under no obligation to provide transcripts of any portion of the proceedings to counsel during the course of trial. If counsel anticipates requesting a transcript of the testimony of any witness or other proceedings during the course of

Complex Civil Guidelines

trial, arrangements should be made with the court reporter in advance so that arrangements can be made to obtain a second court reporter if necessary.

- b. If counsel requests any court reporter to prepare a transcript of any portion of the proceedings, counsel **MUST** contemporaneously advise opposing counsel of the request and of the precise portions that will be transcribed.

8. Jury Trials

- a. Motions in limine and other trial-related preliminary motions (such as Evidence Code § 402) must be submitted in writing before answering ready. Motions in limine may be ruled on by the Court without hearing. Such motions should be brief and should address specific subject matter. See *Amtower v. Photon Dynamics, Inc.*, (2008) 158 Cal.App.4th 1582.
- b. CACI instructions are to be used. Submit proposed instructions in Word format. When reasonably possible, mark up the official version rather than retyping so the changes are apparent to the Court and other counsel. The Court may send at least 4 “clean” sets of instructions provided by counsel into the jury room. “Clean” means just the text of the instruction, as corrected. Plaintiff has the primary, but not exclusive, responsibility to provide the “clean” sets, in binders.
- c. Counsel should consider stipulating to fewer than 12 jurors to try the case. They should also consider stipulating to continue with the trial with fewer than 12 jurors, should one or more be unavailable. Counsel should be prepared to identify the number of alternates that they intend to recommend.
- d. Hardship Requests - Requests by members of the panel to be excused on the ground of undue hardship will be considered by the court prior to beginning voir dire examination.
- e. Jury selection proceeds generally under the “6 pack” method, modified to fit the case. Court and counsel will work out the management of voir dire in accordance with CCP § 225.5 to fit the circumstances of the case. Counsel may submit specific juror questions for the Court to consider asking during voir dire.
- f. Voir dire examination will initially be directed to 18 or more members of the jury panel seated in the jury box. Any of these 18 or more panel members excused for cause will be replaced by additional panel members before peremptory challenges begin. Peremptory challenges will then proceed, directed to the first 12 panel members, who will be replaced by the next six panel members in order as any of the 12 are peremptorily challenged. The peremptory challenges will continue until the panel seated in the jury box is reduced to 11 members, at which time additional

Complex Civil Guidelines

panel members (normally an additional seven) will be selected and examined prior to resuming peremptory challenges. Whenever there are successive passes from all parties who have not exhausted their challenges, or all parties exhaust their challenges, the jury has been selected and will be sworn. The same process will then continue for the selection of alternate jurors.

- g. All challenges for cause will be heard out of the hearing of the jury panel.
- h. The Court will initiate voir dire examination. Before concluding questioning, the Court will ask counsel at the side bar whether they wish the Court to address any additional questions to any or all of the panel members, and will permit counsel to examine the panel. An appropriate time limit will be fixed by the Court.
- i. The Court preinstructs the jury once it is empaneled. CACI Instructions relating to the basic responsibilities of the jurors, management of evidence and the like will be given and, in most cases, repeated at the close of trial.
- j. Objections of any kind are to be addressed to the Court (not to other counsel) with a concise statement of the legal grounds. Argument on the objection without invitation by the Court is not permitted. Advise the Court if argument is necessary for the record.
- k. Make no references to charts, models, blowups or other demonstrative evidence in front of the jury unless: (a) it is in evidence; (b) counsel have previously stipulated the item is in evidence; or (c) you have leave of Court to use the reference.

XIV. TRIAL EXHIBITS

1. **Introduction**

- a. The electronic representations of such exhibits may be presented to the Jury/Court as substitutes for the exhibits themselves. Counsel should keep in mind that one of the purposes of the complex project is to enhance the orderly presentation of evidence to the fact finder, and to maintain the record for potential post trial proceedings.
- b. Exhibits may be in either electronic or physical form. Physical exhibits are not required to be presented in a digitized format. However, at the conclusion of trial the court may order that a photo be substituted and stored electronically in lieu of the physical evidence.
- c. Parties must exchange exhibits excluding documents for bona fide impeachment at the Pre-Trial Meet and Confer. Each counsel must provide the Court with an EXHIBIT LIST

Complex Civil Guidelines

describing each exhibit, indicating whether the exhibit is to be admitted into evidence by stipulation.

d. Counsel must submit to the Clerk original negotiable instruments for cancellation pursuant to Rule 3.1806, unless otherwise ordered by the Court.

2. Submission of Exhibits

a. Counsel must provide the Court with the exhibits, plus one copy. Exhibits will be marked by the Clerk, as they are identified, in chronological order. Exhibits shall not be pre-marked by counsel.

b. Enlargements and transparencies normally will not be admitted into evidence. Any large exhibit or transparency should be accompanied by an 8½ x 11 version to which the exhibit tag is attached. Models, etc. should be photographed if proposed as exhibits. Be sure to discuss evidentiary issues of this nature with opposing counsel.

c. Interrogatories and Requests for Admissions which are expected to be used at trial must be extracted and lodged with the Court, and a copy given to counsel, at the appropriate time. In jury trials, questions and answers must be read into the record, subject to proper objections. The extracts may be submitted as exhibits in a Court trial. In no case will entire sets of written discovery documents be lodged or received.

d. Before trial commences, counsel will be asked to sign a stipulation for the return and maintenance of exhibits when the trial is completed. Plaintiff will maintain joint exhibits, unless otherwise stipulated.

3. Use of Deposition Transcripts

a. Deposition transcripts which are expected to be used at trial must be lodged with the Court on the first day of trial. Pertinent provisions must be read into the record in jury trials, subject to proper objections. In Court trials, extracts may be submitted and marked as exhibits. In no case will an entire transcript be received.

Complex Civil Guidelines

CURRICULUM VITAE FOR JUDGE BRIAN C. WALSH

**Judge Brian C. Walsh
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, California 95113
Department 1
408-882-2110**

JUDICIAL CAREER:

**Appointed to the Superior Court December 15, 2000
--Elected to 6-year terms (unopposed): 2002, 2008, 2014
Complex Civil Litigation, 2017-
Presiding Judge, 2013-14
Assistant Presiding Judge, 2011-12
Civil Trials, 2003-04, 2007-09, 2011-12, 2015-16
Family Law, 2009-10
Felony Trials, 2005-07
Appellate Division, 2005
Supervisor, Misdemeanor Direct Calendars, 2002-03
Misdemeanor Direct Calendar, 2001**

**6th DCA, Pro Tem Justice:
June 1-November 30, 2016
June 1-September 30, 2015
July 1-December 31, 2011
May 1, 2004-January 17, 2005**

**California State-Federal Judicial Council, 2003-present
Language Access Plan Implementation Task Force, 2015-present
Chair, Trial Court Presiding Judges' Advisory Committee, 2013-2014
Member, Judicial Council of California, 2013-2014
Chair, Task Force on Trial Court Fiscal Accountability 2013-2014
Supreme Court Judicial Ethics Advisory Comm., 2002-2013
Financial Accountability & Efficiency Comm. ("A & E"), 2011-2013
Trial Court Budget Advisory Committee, 2013-2014
--Funding Methodology (WAFM) Subcommittee, 2012-2014**

Complex Civil Guidelines

Judicial Branch Budget Advisory Committee, 2002-03
Chief Justice Task Force on ACA 1 (Judicial Elections), 2001
California Judges' Association, 2000-present
State Bar Attorney Civility Task force, 2006-08
State Bar Task Force on Support for Legal Services, 2006-08

2016 State Bar of California Professional Responsibility Award
2014 Outstanding Jurist Award, Santa Clara County Bar Association
2012 Trial Judge of the Year, Santa Clara County Trial Lawyers
2002 Salsman Award: Contributions to Community/Profession

EDUCATION:

Boalt Hall School of Law
University of California at Berkeley
J.D., 1972

University of Notre Dame
B.A., 1969

Date of Birth: November 11, 1947 (San Jose, California)

Complex Civil Guidelines

CURRICULUM VITAE JUDGE THOMAS E. KUHNLE

THOMAS E. KUHNLE
Judge
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, California 95113
408-882-2150

The Honorable Thomas E. Kuhnle was appointed in December 2010 to serve as a Superior Court Judge in Santa Clara County. His assignments have included misdemeanors in 2011, family violence from 2012 to 2014, civil trials in 2014, and probate in 2015 and 2016. He currently serves as a complex civil litigation judge. Since his appointment, Judge Kuhnle has participated in a number of law-related activities in our community including Santa Clara County's High School Mock Trial Program (2011-present), the Domestic Violence Council's Court Systems Committee (2012-14), Stanford Law School's Trial Advocacy Workshop (2012-present), various committees of the Santa Clara County Bar Association, and the California Judges Association Probate and Mental Health Committee (2015-2016). Judge Kuhnle graduated from Stanford Law School in 1995.