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DEPARTMENT 41 CASE MANAGEMENT PILOT PROGRAM

The Ventura Superior Court has the goal of efficiently resolving cases. As such, Department 41 will conduct an 18 month pilot program in order to reduce costly pretrial disputes, encourage early case resolutions, and streamline trials. If a case meets the minimum requirements for participation (described in the “Case Qualifications for Participation” section below), the attorneys for both parties must stipulate to the conditions and sign a Petition Requesting Admission into Pilot Program in order to be considered for admission. Cases which take part in the program will see the following benefits:

1. Meaningful Case Management Conferences (CMCs) and early mediations which will:
 - a. Explore early case resolutions,
 - b. Narrow the legal and factual issues of a case, and/or
 - c. Produce detailed case management orders with enforceable deadlines and pretrial structures.
2. Discovery Referee Services and Alternative Dispute Resolution (ADR) priced at \$50 per hour.
3. Informal Judicial Resolutions of pre-trial disputes which will minimize cost and time by eliminating formal Law and Motion appearances.
4. Productive Final Status Conferences (FSCs) held two weeks before trial for the final exploration of settlement possibilities and the comprehensive exchange of all documents.

NOTE: Because Judge Bysse is only available one half day per month to conduct CMCs, approximately four to five cases will be enrolled in the program every month.

HISTORY AND PURPOSE

The Ventura Superior Court’s current case management system was developed approximately seventeen years ago. This system was implemented to comply with the Trial Court Civil Delay Reduction Act, which required most civil cases to be concluded one year after being filed. The Court has had a remarkable record of achieving this goal.

Our system mandates that parties in unlimited cases are not required to appear before a judge for a CMC, but parties in complex cases are. Unless there is a Law and Motion hearing, the parties do not appear before a judge until the Mandatory Settlement Conference (MSC). Therefore, there is little active management of the case by the judge. As a result, the opportunity to resolve issues informally or to explore settlement before the MSC at the final stages of the case is severely limited.

Judge Bysse has concluded that many cases could benefit from involving the judge with the parties in developing a more specific case management plan. The pilot program is designed to test this hypothesis.

THE INITIAL CASE MANAGEMENT CONFERENCE (CMC)

For any case accepted into the program, the court will schedule an initial CMC in Department 41 approximately 60 days the complaint is filed. Although personal attendance of

the trial attorney is preferred, telephone appearances are permissible. Prior to the CMC, the attorneys must meet and confer in order to draft a proposed case management plan which will state deadlines tailored to the case.

The primary purposes of the CMC will be to:

1. Prepare a preliminary Case Management Order (CMO),
2. Set a date for a meeting with a mediator (approximately 60 days after the CMC),
3. Examine what discovery will be necessary to promote the efficiency of that meeting,
4. Determine the possibility of early settlement, and
5. Allow the court to narrow any issues.

MEETING WITH THE MEDIATOR

The mediator will continue the efforts of the court in dealing with both parties. The mediator's job will be primarily to:

1. Have the parties realistically evaluate their respective cases,
2. Have the parties discuss how the case plan will be structured,
3. Have the parties finalize the CMO,
4. Explore the possibility of early settlement, and
5. Develop methods of focusing on the real issues of the case, such as eliminating peripheral issues by stipulation or admissions.

If the mediator determines that there is a reasonable likelihood of early resolution of all or part of the case, he will have the authority to order further conferences to accomplish these goals.

CASE MANAGEMENT ORDER (CMO)

Within ten days after the meeting with the mediator, a proposed and jointly signed CMO will be submitted to Judge Bysshe, through his secretary, for signature (no appearance required).

In the event of disagreement as to the contents and/or deadlines of the proposed CMO, the parties will submit their respective proposed CMO for an Ex-Parte hearing in Department 41 to resolve the dispute within 15 days of meeting with the mediator.

DISCOVERY REFEREES AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

From time to time, parties become embroiled in discovery disputes. These are best resolved by sitting down with the parties and going over a number of issues (interrogatories, production demands, etc.) to determine what the requesting party really wants to obtain and what objections are legitimate and reasonable.

Since these types of discussions can't be effectively accomplished in a Law and Motion setting, they are often sent to a discovery referee. Unfortunately, traditional discovery referees are expensive and often the parties cannot cover the costs.

In an effort to resolve this financial problem, all attorneys whose cases are enrolled in the pilot program must agree to serve as a discovery referee for at least 6 hours per case enrolled in the program at the rate of \$50.00 per unrelated party (Note: husband and wife are to be considered one party, as are an individual d.b.a. and fictitiously named parties). Attorneys will also serve as Settlement Pro Tems at the same rate of compensation.

INFORMAL DISPUTE RESOLUTION (IDR)

As part of the pilot program, Judge Bysshe will be available several days each week from 4:30 to 5:00 p.m. to meet, confer and resolve disputes on an informal basis by way of a conference call or chambers conference. These conferences must be calendared by the judicial secretary, and will last no more than ten minutes. They will be preceded by a submission (24 hours before the conference via fax or e-mail) of a one page, jointly prepared summary of a narrowly defined dispute or question.

Within 48 hours of the conclusion of the IDR conference, counsel will be required to submit a jointly prepared one page memorandum summarizing the resolution of the subject dispute and/or directions regarding the dispute. The memorandum will then be lodged in the file. While not a judicial order, the memorandum will be given great weight by Judge Bysshe if an order is required in a subsequent, properly noticed proceeding involving the dispute of the IDR conference.

FINAL STATUS CONFERENCE (FSC)

A Final Status Conference will be held two weeks before trial to explore settlement and the comprehensive exchange of documents including but not limited to:

- Trial briefs, motions in limine, and other pre-trial motions,
- Witness and evidence lists, and
- Special voir dire questions to be added to the court's standard voir dire question sheet.

A written list of all such documents will be filed with the court. No additional documents will be permitted for use in the case without the written permission of the court, which will be difficult to obtain.

The goal of this deadline is to encourage the parties, approximately 6 weeks before trial, to request that the court give the case to a mediator in order to make a final settlement attempt.

CASE QUALIFICATIONS FOR PARTICIPATION

In order to qualify for participation in Department 41's pilot program:

1. The case must be vertically assigned to Department 41,
2. The case must be an unlimited case where it is anticipated there will be significant discovery and pretrial disputes because of:
 - a. Novel legal issues,

- b. An unusual number of percipient/expert witnesses,
 - c. Multiple parties, and/or
 - d. Substantial electronic discovery.
3. All attorneys in the case (except those representing parties peripherally involved, as determined by the court) must agree to serve as a settlement/mediation Judge Pro Tem and/or a Discovery Referee for up to six hours at the rate of \$50.00 per hour per unrelated party in the case.

OPTING IN TO THE PROGRAM

If plaintiff's counsel wishes to have the case admitted into the pilot program, plaintiff's counsel must:

- Contact defendant's counsel within 10 days of defendant's first appearance,
- Invite defendant's counsel to enroll in the program, and
- Send defendant's counsel a signed petition with attached rules.

If defendant's counsel also wants the case enrolled into the program, the parties must send the jointly signed petition directly to Department 41 at 800 S. Victoria Avenue, Ventura, California 93006, along with a brief letter describing why the case is suitable for the pilot program.

The court will notify counsel within 5 days of receiving such request of whether or not the case has been accepted into the program. Once a case has been accepted into the pilot program, there will be no opting out of the program. In addition, cases accepted into the program will no longer be managed on the standard track in Courtroom 22B.

Suggested Topics to be Covered in First Case Management Conference with Judge Bysshe

Counsel:

The attorneys should meet and confer regarding the topics listed below before the case management conference and prepare a tentative order regarding these topics. The attorneys should attempt to reach agreement on as many of these topics as possible. On those topics where there is no agreement, each side is to present their proposal on the topic at issue and reason why their position is well taken.

1. The salient factual and legal issues:
 - a. Method to identify, narrow, and resolve issues
 - b. Joint stipulation of all facts amendable to stipulation
 - c. List of key disputed facts
 - d. Preservation orders and proceedings for handling claims of confidentiality and privilege.
2. The status of the pleadings.
3. The major procedural and substantive issues likely to be encountered.
4. Can we target discovery on issues for early resolution?
5. Identify key documents and witnesses.
6. Proposed outlines and timeline for discovery:
 - a. Depositions, production of documents, testing, etc. (deadlines should be realistic and firm).
7. Logistics:
 - a. Adoption of a uniform numbering system for documents
 - b. Need for a documentary discovery.
8. Need to appoint a discovery referee?
9. Need for bifurcation?
10. Settlement:
 - a. Mediation?
 - b. Settlement conference?
11. Dates for Motions for Summary Judgment and/or Adjudication.
12. Ideas for the efficient management of the case (suggestions for staging, etc.)

VENTURA COUNTY BAR ASSOCIATION GUIDELINES ON PROFESSIONAL CONDUCT AND CIVILITY

PREAMBLE

The Ventura County Bar Association is committed to the highest standards of professional courtesy and ethics for all attorneys. In recognition of our commitment, the following Code of Civility is adopted as a guide for professional conduct. These guidelines are not exhaustive; they illustrate, however, recognized principles to which this Bar enthusiastically subscribes to as a means of promoting professional and equitable relations in all circumstances and regardless of reciprocity, not only among colleagues and the courts, but with clients, staffs and the public.

Therefore, in addition to abiding by the rules of Professional Conduct codified by the California State Bar, attorneys practicing or appearing in Ventura County are expected to adhere to the following guidelines for professional behavior.

Section 1. Scheduling

Civility and courtesy in scheduling meetings, hearings and discovery are expected, are not equated with weakness, and are not inconsistent with zealous representation of clients. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Make reasonable efforts to schedule meetings, hearings, and discovery by agreement whenever possible and to consider the schedule of opposing counsel, the parties, and witnesses before scheduling any matter.
- b. Refrain from arbitrarily or unreasonably withholding consent to a request for scheduling accommodations.
- c. Refrain from engaging in delaying tactics when scheduling meetings, hearings and discovery.
- d. Verify the availability of key participants and witnesses before scheduling a meeting, hearing or trial date, or if not feasible, at the first opportunity thereafter so that others can promptly notify the court, parties, and witnesses of any scheduling problems.
- e. Notify other counsel, and as appropriate, the court or other tribunal, as early as possible, when scheduled meetings, hearings, or depositions are being canceled or rescheduled.

Section 2. Continuances and Extensions of Time

- a. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted as a matter of courtesy unless time is of the essence. A first extension should be allowed even if the counsel requesting it has previously refused to grant an extension.

- b. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.
- c. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough".
- d. A lawyer should not seek extensions or continuances for the purpose of harassment or prolonging litigation.
- e. A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as the right to demurrer.

Section 3. Service of Papers

- a. The timing and manner of service of papers should not be used to the disadvantage of the party receiving the papers.
- b. Papers should not be served sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.
- c. Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.
- d. Service should be made personally or by facsimile transmission when it is likely that service by mail, even when authorized, will prejudice the opposing party.

Section 4. Punctuality

A lawyer should be punctual in performance of all obligations and duties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Arrive in advance of trial, hearing, meeting, deposition or other scheduled event so that preliminary or procedural matters may be resolved.
- b. Timely notify all other participants and the court when the lawyer or other participant will be late.

Section 5. Communications

Memoranda, declarations, and other written materials submitted to the court should be factual, concise and accurately state the current law without personally attacking the opposing party or opposing counsel. A lawyer should be civil, courteous and as accurate as possible when communicating with adversaries and the court. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Argue only that which is clearly supported by the law or the facts of the case.
- b. Show respect and dignity to all judicial officers, parties, counsel and witnesses.
- c. Accurately recite positions taken by a party or counsel.
- d. Promptly respond to telephone calls, letters or other communications.
- e. Comply with all local and state rules regarding ex parte communications with the court.

Section 6. Discovery

A lawyer should not use any form of discovery, including the scheduling of discovery, to harass, delay, increase the cost of litigation, or to obtain an unfair advantage. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Timely respond to discovery requests.
- b. Fully and accurately respond to discovery requests with all information relevant to the discovery request, and to provide discovery responses, including the production of documents, in an organized manner.
- c. Conduct discovery in good faith and not to harass another or to unduly invade the rights of privacy of others.
- d. Conduct discovery with the same degree of professionalism as expected in a courtroom.
- e. Timely and in good faith, meet and confer on discovery disputes to resolve as many issues as possible before discovery motions are prepared or required.
- f. As to document requests, a lawyer should refrain from
 1. Requesting production of documents which are not reasonably believed to be needed for the prosecution or defense of an action or which are not reasonably calculated to lead to the discovery of admissible evidence.
 2. Conducting discovery designed to harass or to embarrass another, or which is intended to impose an inordinate burden or expense.
 3. Asserting privileges which cannot, in good faith, be supported by the law or the facts of the case.

4. Seeking to invade known and valid privileges.
 5. Producing documents in such a disorganized or unintelligible fashion calculated to hide or to obscure the existence of a document or information.
 6. Withholding or delaying the production of documents when such delay is solely intended to obtain a tactical or unfair advantage.
- g. As to interrogatories, a lawyer should refrain from
1. Serving interrogatories intended solely to harass or to impose an undue burden or expense.
 2. Responding to or interpreting interrogatories in an artificial manner designed to avoid providing relevant or accurate information.
 3. Posing objections to interrogatories when not supported by the facts and the law.

Section 7. Motion Practice

Motions should be filed in good faith and only if the issue cannot otherwise be resolved. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Engage in more than a mere pro forma effort to resolve the issue before the motion is filed or responded to;
- b. Refrain from engaging in conduct which forces opposing counsel to file a motion unless intending to oppose such motion in good faith or unless the relief sought affects the interests of the court or of persons or parties other than the lawyer's client.

Section 8. Communicating with Non-Party Witness

All communications with non-party witnesses should be courteous and respectful and designed to protect the dignity and integrity of the judicial system. The lawyer should explain to unrepresented witnesses the purpose of the required attendance. The lawyer should attempt to accommodate the witnesses' schedule when setting or rescheduling the witnesses' appearance and should promptly notify them of any changes in scheduling.

Section 9. Ex Parte Communications with the Judge or Hearing Officer

Lawyers should avoid ex parte communication regarding the substance or merits of a pending case with the court before whom such case is pending. Where applicable rules or laws permit an ex parte communication, before making such application or communication, the lawyer should make diligent efforts to notify the opposing party or opposing counsel known to represent or likely to represent the opposing party, should make reasonable efforts to accommodate the schedule of counsel or opposing party and should avoid taking advantage of an opponent's known absence or unavailability.

Section 10. Candor to the Court and Opposing Counsel

Professional courtesy and civility requires all lawyers to:

- a. Accurately state the facts and legal authority to the court and to opposing counsel. Written materials and oral argument should accurately state current law and should fairly represent the party's position without unfairly attacking the opposing counsel or party.
- b. Draft proposed orders promptly, fairly and accurately representing the ruling of the court. When proposed orders are submitted for approval, the opposing lawyer or party should promptly communicate any objection to the party preparing the proposed order so that good faith efforts are undertaken to resolve the dispute.
- c. Respect and abide by the spirit and letter of all rulings.

Section 11. Settlement and Alternative Dispute Resolution

Lawyers should consider and explore the potentials of settlement or alternative dispute resolution as soon as the case can be evaluated, and if appropriate, such alternatives to litigation should be encouraged. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Advise the client at the outset of the availability of alternatives to litigation and in good case to determine whether some alternative to litigation should be pursued.
- b. Engage in good faith efforts to settle disputes and not as a means of adjourning, terminating discovery, or delaying the proceeding.
- c. Accurately inform clients of the strengths and weaknesses of the client's case.

Section 12. Trials and Hearings

Lawyers should at trial and during hearings, conduct themselves in a manner consistent with promoting the positive image of the profession and with respect and dignity to the judicial process. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Be punctual and prepared for all court appearances.
- b. Extend courtesy, civility and respect to anyone involved in the judicial process.
- c. Make objections during a proceeding for legitimate and good faith reasons and not solely for the purpose of harassment, delay, or any other improper purpose.
- d. Honor reasonable requests made by an opponent to enter into stipulations, for the admission of evidence, the coordination of the presentation of evidence, and other such matters, taking into account the client's legitimate concerns and without compromising any tactical advantage.

Section 13. Privacy

All matters should be handled with due respect for the rights and privacy of parties and non-parties. Accordingly, professional courtesy and civility requires all lawyers to:

- a. Refrain from inquiring into, attempting to use, or threatening to use, private matters of any party or other individual so as to gain an advantage in a case, where such information is not relevant to the specific issues at hand. In the event sensitive and private matters are relevant and probative within a proceeding, the lawyer should use such information only to the extent necessary.
- b. Maintain privacy and confidentiality.

Section 14. Diversity

Our society is diverse. As our profession grows to mirror the diversity in society, we must commit ourselves to advancing tolerance and respect for diverse cultures, opinions and views, and expand opportunities to those who have traditionally been excluded. Our profession includes men and women of various races, ethnicity, political views, cultural and economic backgrounds, religions, disabilities and sexual orientation. It also includes a wide variety of specialties, affiliations and professional relationships. Professional courtesy and civility requires lawyers to respect diversity and to uniformly honor these rules of civility without discrimination and with equal dignity.

Section 15. The Courts

Our judicial system is a cornerstone of our democracy. In order for our courts to serve their constitutional function, the public and the legal profession must have confidence in them. Respect for the institution of the judiciary, the judicial officers, administrators and court support staff is essential in maintaining public confidence in our judicial system. At the core of our legal system is the acceptance of our courts as the adjudicator of criminal and civil disputes. Professional courtesy and civility requires lawyers to recognize the importance of the judicial office and to refrain from disparaging the judiciary, and those holding the office.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

[_____],
Plaintiff(s),
vs.
[_____ and [DOES 1-__],
Inclusive,
Defendant(s).

Case No: _____

**PETITION REQUESTING
ADMISSION INTO PILOT
PROGRAM**

Plaintiff(s) _____ and Defendant(s) _____, by

and through their respective counsel, submit the following written petition requesting admission into Department 41's Unlimited Case Pilot Program.

1. This case qualifies for admission into the Pilot Program because it is anticipated that there will be significant discovery disputes and/or an unusual number of percipient/expert witnesses and/or multiple parties and/or substantial electronic discovery.

2. The parties and their respective counsel have read and agree to comply with Department 41's Pilot Program Rules and Procedures, including, but not limited to:

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1 a) all meet and confer orders by the Court will require that counsel will not engage in
2 perfunctory meetings and discussions but, rather, will each engage in sincere, meaningful
3 and good faith meetings, in person if possible, to arrive at consensus, where possible, and
4 not to be involved in such tactical strategies as “scorched earth”, “hide the ball” and
5 “catch me if you can”.

6 b) Counsel acknowledge that they have a dual role as both advocates and officers of the
7 court; therefore, all counsel involved in this case, from senior lead trial counsel to the
8 most junior associate, represent that they have carefully read and agree to abide by the
9 Ventura County Bar Associations Code of Civility, a copy of which is posted on the
10 Court’s website.
11

12 3. To assist the Court in achieving its goal of reducing the costs of litigation, lead counsel in this
13 case, except for counsel who neither reside nor have an office in Ventura County (see Paragraph 4
14 below), agree to serve as a discovery referee and/or settlement pro tem Judge for up to six (6) hours per
15 year at the compensation rate of \$50.00 per hour, per unrelated party. Note: For purposes of establishing
16 these \$50.00 per hour compensation rates for work in other cases, all family members or party doing
17 business under a fictitious name shall be deemed to be one unrelated party. All other parties to this
18 action will be deemed unrelated parties and be required to each pay \$50.00 per hour to the attorney
19 acting as a discovery referee or an ADR pro tem. If called on to serve in such capacity, counsel agree to
20 abide by the ADR ethical requirements of being honest and diligent, of acting in good faith, and of not
21 advancing their own personal interests. In addition, counsel working in other cases agree to treat all
22 written and oral communications made during these proceedings, except those that are agreed by the
23 parties to be disclosed, confidential (See California Rules of Court 3.850). Finally, to ensure
24 competency, counsel must represent that they have been in practice as attorneys in excess of thirteen
25 (13) years OR have completed a Temporary Judge Training Program within the last 3-years and
26 received the Court ADR training.

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1 4. Counsel who neither reside, nor have an office in Ventura County, agree to petition Judge
2 Bysshe for a waiver of the requirement to work in a quasi judicial capacity at the reduced compensation
3 in other cases by participating in other programs deemed appropriate by Judge Bysshe to assist the Court
4 in reducing the costs of litigation.

5
6 5. The parties agree that this case will be managed by Judge Bysshe with the goal of completing
7 the case within one year, but he may, for good cause, extend the completion date beyond one year.

8
9 Dated: _____ Counsel for Plaintiff(s)

10 Dated: _____

11 Dated: _____

12
13 Dated: _____ Counsel for Defendant(s)

14 Dated: _____

15 Dated: _____