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Deering's California Codes Annotated  
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CALIFORNIA RULES OF COURT  
Title 3. Civil Rules  
Division 12. Settlement

*Cal Rules of Court, Rule 3.1380 (2015)*

**Rule 3.1380. Mandatory settlement conferences**

**(a) Setting conferences** On the court's own motion or at the request of any party, the court may set one or more mandatory settlement conferences.

(Subd (a) amended effective January 1, 2008; previously amended effective January 1, 1995, and July 1, 2002.)

**(b) Persons attending** 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.

(Subd (b) amended and relettered effective July 1, 2002; adopted as subd (c) effective January 1, 1985; previously amended effective January 1, 1995.)

**(c) Settlement conference statement** No later than five court days before the initial date set for the settlement conference, each party must submit to the court and serve on each party a mandatory settlement conference statement containing:

- (1) A good faith settlement demand;
- (2) An itemization of economic and noneconomic damages by each plaintiff;
- (3) A good faith offer of settlement by each defendant; and
- (4) A statement identifying and discussing in detail all facts and law pertinent to the issues of liability and damages involved in the case as to that party.

The settlement conference statement must comply with any additional requirement imposed by local rule.

(Subd (c) amended effective January 1, 2008; adopted as subd (d) effective January 1, 1985; previously amended effective January 1, 1995, and January 1, 2007; previously amended and relettered effective July 1, 2002.)

**(d) Restrictions on appointments** A court must not:

(1) Appoint a person to conduct a settlement conference under this rule at the same time as that person is serving as a mediator in the same action; or

(2) Appoint a person to conduct a mediation under this rule.

(Subd (d) adopted effective January 1, 2008.)

#### **HISTORY:**

Rule 3.1380 amended effective January 1, 2008; adopted as rule 222 effective January 1, 1985; previously amended effective January 1, 1995, July 1, 2001, and July 1, 2002; previously amended and renumbered effective January 1, 2007.

#### **NOTES:**

##### **Advisory Committee Comment**

**Subdivision (d)** This provision is not intended to discourage settlement conferences or mediations. However, problems have arisen in several cases, such as *Jeld-Wen v. Superior Court of San Diego County* (2007) 146 Cal.App.4th 536, when distinctions between different ADR processes have been blurred. To prevent confusion about the confidentiality of the proceedings, it is important to clearly distinguish between settlement conferences held under this rule and mediations. The special confidentiality requirements for mediations established by *Evidence Code sections 1115-1128* expressly do not apply to settlement conferences under this rule. This provision is not intended to prohibit a court from appointing a person who has previously served as a mediator in a case to conduct a settlement conference in that case following the conclusion of the mediation.

#### **Collateral References:**

*Cal. Fam. Law Practice & Procedure* (Matthew Bender(R)), § 111.08.

*Cal. Fam. Law Practice & Procedure* (Matthew Bender(R)), § 111.09.

Cal Civil Procedure Before Trial (CEB) §§ 68.1 et seq.

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure § 4.07[2].

Rutter, Cal Prac Guide, Family Law §§ 13:40 et seq.; Personal Injury §§ 4:240 et seq.

#### **Annotations:**

Power of court to adopt general rule requiring pretrial conference as distinguished from exercising discretion in each case separately. 2 ALR2d 1061.

## NOTES OF DECISIONS

**Decisions Under Former Rules**

1. Applicability 2. Authority of Court

**Decisions Under Current Rule**

1. Generally 2. Practice and Procedure

**Decisions Under Former Rules****1. Applicability**

Cal R of Court 222 (requiring persons with authority to settle to be in attendance at mandatory settlement conferences), pertains only to mandatory or voluntary settlement conferences supervised by the court. It did not apply to a voluntary settlement conference before a private person arranged by the parties without request or notice to the court, where the conference was not on the court calendar, the parties were not required to and did not file settlement conference statements, and the conference was held without use of the court's facilities and at no cost to the county. *Raygoza v. Betteravia Farms* (1987, *Cal App 2d Dist*) 193 *Cal App 3d* 1592, 239 *Cal Rptr* 188, 1987 *Cal App LEXIS* 2003.

**2. Authority of Court**

A written local policy of a superior court compelling the attendance of the parties themselves at the mandatory settlement conference was not unenforceable on the grounds it took the form of a local policy rather than a local rule, and that a party in a civil case may not be required to be personally present at any stage of the litigation. So long as those to be governed by the local policies of courts are fully and fairly informed of their requirements in advance, and particularly of the fact that the policies represent requirements rather than mere guidelines, they are as fully enforceable generally as court rules. Furthermore, while a court may not compel a litigant to settle a case, it may direct him to engage personally in settlement negotiations, provided the conditions for such negotiations are otherwise reasonable, and the fact that a court may not force a party to be personally present at the trial of a civil action does not mean that it may not command his attendance in person at a mandatory settlement conference. *Wisniewski v. Clary* (1975, *Cal App 2d Dist*) 46 *Cal App 3d* 499, 120 *Cal Rptr* 176, 1975 *Cal App LEXIS* 1789.

An award of attorney fees to defendant's attorney as sanctions for plaintiffs' failure to personally attend a mandatory settlement conference as required by a written local superior court policy, was beyond the power of the court as made without express authority, where the policy imposed sanctions by way of attorney fees only for the failure of a defendant or other responding party to appeal, but provided for vacation of the trial date and dismissal of the action for a plaintiff's nonappearance. There was no merit to the contention that the sanctions were made pursuant to a conditional dismissal and were therefore authorized by the policy, since a court may not impose illegal conditions of dismissal and attorney fees generally may be awarded only pursuant to agreement of the parties or express authority elsewhere in the law. *Wisniewski v. Clary* (1975, *Cal App 2d Dist*) 46 *Cal App 3d* 499, 120 *Cal Rptr* 176, 1975 *Cal App LEXIS* 1789.

**Decisions Under Current Rule 1. Generally**

Neither *CCP* § 177.5, nor *Cal R of Court* 2.30, nor any other statute or court rule authorizes the imposition of sanctions on a nonparty insurer for its purported failure to participate in good faith in a mandatory settlement conference. *Vidrio v. Hernandez* (2009, *2d Dist*) 172 *Cal App 4th* 1443, 92 *Cal Rptr 3d* 178, 2009 *Cal App LEXIS* 542.

**2. Practice and Procedure**

Trial court erred in imposing monetary sanctions against an insurer after it determined that the insurer's claims adjuster and the lawyer that it had provided to defend its policyholder in a personal injury action had failed to negotiate

in good faith at a mandatory settlement conference because the failure to increase a settlement offer or to otherwise participate meaningfully in settlement negotiations violated no rule of court and was not a proper basis for an award of sanctions. The policyholder filed an appropriate settlement conference statement, with her lawyer and the insurer attending the conference and participating in it, and while the trial court's frustration at the parties' lack of movement was understandable, no more was required. *Vidrio v. Hernandez* (2009, 2d Dist) 172 Cal App 4th 1443, 92 Cal Rptr 3d 178, 2009 Cal App LEXIS 542.