



## From the President

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# Ways around the logjam

“Voluntary Efficient Litigation Stipulations” may streamline discovery and motions in limine

Does this conversation sound familiar?

[Legal assistant to court clerk on September 8, 2011]

**Q.** I'd like to reserve a date for a discovery motion. Our trial is set for January 15, 2012.

**A.** Ok. Our first date is November 21.

**Q.** That is too late for us. We have to list experts on 11/26 and we can't even get the defendant's deposition done. That is why we are filing the motion.

**A.** I'm sorry. We are just booked up.

**Q.** Well, can I go ex-parte to set an earlier hearing?

**A.** You are welcome to come in and ask the judge, but he has been denying them for discovery motions. You best try and work things out with the other side.

Our office is occasionally getting discovery motion dates six weeks or so downstream. Budget cutbacks will probably make long delays routine. Help is on the way. Enter the “Voluntary Efficient Litigation Stipulations.”

These consist of three different stipulations entered into voluntarily by the parties: an Early Organizational Meeting or “EOM” (the EOM stipulation is form LACIV 229), a Discovery Resolution Stipulation and a Motions in Limine Stipulation.

Copies of the program particulars and these three stipulations are now going out from the court with the ADR package and other forms when a new complaint is filed in the Mosk Courthouse in downtown Los Angeles. Currently it is a pilot project for Mosk only, although some branches or judges at branches are considering using them.

The program was developed recently by a joint attorney and judge committee of the Los Angeles County Bar Association. It has now been endorsed by the leadership of the Association of Southern California Defense Counsel, the Consumer Attorneys Association of

Los Angeles, the Association of Business Trial Lawyers, the California Employment Lawyers Association, and various sections of the Los Angeles County Bar Association.

The goals of the program are obvious – to save court time and parties' expense by encouraging early and meaningful cooperation between counsel. Discovery motions often have little effect on the ultimate outcome of the case; they are frequently an outgrowth of poor communication between busy attorneys. Cooperation is key. Limines are also often perfunctory and could be resolved informally.

The early meeting of counsel should occur before any responsive pleading is due. When utilized, time for such pleadings is extended 30 days under CCP §1054a. The meeting must be held within 15 days of the stipulation.

### Topics to be discussed at the EOM

- Are motions to challenge the pleadings necessary; will the outcome really be affected? Can plaintiff just amend? Can information be exchanged to create a more focused pleading challenge if necessary?
- Mutual exchange of key documents and information: medical records, insurance and witness information, damage reports, photos.

What information does each side need before a meaningful mediation can be held?

Is the case appropriate for an expedited jury trial (i.e. 1-2 days)?

A report on the EOM must be filed with the CMC statement.

### Informal discovery

The stipulation for an informal discovery resolution is form LACIV 036. Key terms include the following

- No discovery motion may be filed or heard unless the moving party first makes a written request to the court for an informal discovery conference. The

form to request the conference is LACIV094.

- Moving party files a brief summary of the dispute and relief requested; responding party does the same; no exhibits or attachments are allowed.
- The court has 10 days to grant or deny the request to hold an informal conference; if the court does not act within that time, the request is deemed denied. If granted the conference must be held within 20 days unless extended by agreement; if not held, then the request is deemed denied.
- At the conference the court will determine if informal resolution is possible; if not, it can then be set for formal motion. Either party can make a record at the conference.
- The stipulation can be terminated on 21 days notice.
- Filing a request for informal conference tolls the time to file a discovery motion.

### Motions in limine

The stipulation provides for exchange between attorneys of a one paragraph description of any proposed limine and the grounds on which it is based. The parties then meet and confer live (not by letter) phone or face to face.

Limines that require court determination should be presented, if possible, as a joint statement of issues and bases and filed with the court at last 10 days before the FSC. Each side is limited to three pages.

Those limines that cannot be handled by informal resolution or joint statement can be filed in the customary manner pursuant to the CRC and LASC rules.

Form LACIV075 is the stipulation for informal resolution of motions in limine.

Cooperation is not just about professionalism and civility; it is also about keeping the courts open. The stipulations are a step in the right direction.