

Daily Journal

www.dailyjournal.com

FRIDAY, JANUARY 22, 2016

Complex neighbors: Santa Cruz & Santa Clara

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Santa Clara County is the most populated county in the San Francisco Bay Area with close to 1.9 million people. The county is home to cutting edge Silicon Valley and boasts a median household income of \$93,854. Santa Clara County Superior Court had 24,576 civil filings in 2013-2014 with roughly 250 complex civil cases. The court's 2015-2016 fiscal year budget is just over \$103 million.

In comparison, Santa Cruz County has an estimated population of 272,000. The county is known for beautiful beaches and agriculture and has a median household income of \$66,923. In 2013-14, Santa Cruz had 3,562 civil filings, including three dozen complex civil cases. The court has budgeted \$15.2 million for the upcoming fiscal year.

How do these neighboring counties handle complex cases?

Case Management

Complex cases filed in Santa Clara are assigned to Complex Civil Litigation Department Presiding Judge Peter Kirwan for all purposes. In Santa Cruz, most complex civil cases are assigned to Department 4 or 5 solely for pre-trial management, but a complex case also may be assigned to another available department at master calendar. Both counties often appoint special masters to assist with management and settlement of complex disputes.

In each jurisdiction, a case management conference generally is scheduled within six months of filing. Standard CMC forms are discouraged, and counsel are instructed to file substantive joint CMC statements. As Judge Kirwan explains, "The theory is to get the parties to talk, define important issues early and not be as polarized." Counsel may appear at CMCs by telephone, but personal appearance is recommended if the parties plan to discuss significant issues.

E-Filing

Santa Clara County Superior Court mandated e-filing and e-service for complex civil cases through a stand-alone website (www.sceffiling.org) in September 2006. Users may view all

pleadings, including orders and minutes, at no charge. Litigants also may log in with a username and passcode to view restricted documents.

Last month, Santa Clara began transitioning to Odyssey online case management for civil and family law cases; criminal matters will follow in Spring 2016. These cases eventually will accept e-filing through Odyssey. Internally, the complex department will use Odyssey for data entry and case management, but attorneys will continue to use the existing complex department website.

In October 2015, Santa Cruz Superior began scanning documents and making them readily available online to all court personnel through Odyssey. Attorneys may apply for online access to documents in their cases; otherwise, users can just view the date and title of filed documents. E-filing in all civil cases is slated for March 2016.

Santa Cruz Superior Court Judge Rebecca Connolly notes that online access "allows the judge to save relevant files for easy access without being hampered by voluminous paper files and can facilitate the judge's understanding of the legal issues being presented." The judge suggests that counsel offer to provide judges or court staff with free access to any online service utilized by the parties in jurisdictions without electronic filing.

Mandatory Settlement Conferences

Mandatory settlement conferences in the Santa Clara courthouse usually occur one to two weeks before Trial. Judge Kirwan meets with any special master prior to the MSC to assist negotiations. MSCs are not conducted on the first day of trial.

Santa Cruz generally sets an MSC four weeks prior to trial, but will work with counsel to set other dates, including the first day of trial. Settlement conferences in complex cases utilizing a special master preferably are conducted off site, as large multi party conferences tend to tax court facilities.

Representatives with full settlement authority must attend MSCs. As Judge Kirwan succinctly explains: "Full settlement authority means no one needs to make a phone call."

Trial

Judge Kirwan sets complex civil trials approximately one year in advance. Trial dates are firm. With the consent of all counsel and good cause shown, parties may submit a written request for a continuance to a pre-approved trial date provided by Complex Case Administrator Rowena Walker.

The Santa Cruz presiding judge assigns complex trials to any available judge in the civil or criminal departments. Complex cases currently are being scheduled for trial about eight months out. While trial dates are firm, the court generally grants one continuance upon a finding of good cause and the consent of counsel.

In both courts, parties are strongly encouraged to streamline the trial process by preparing joint witness lists, exhibit lists, jury questionnaires and motions in limine. A tabbed binder of joint trial exhibits with proposed exhibit numbers and a computer disk of important documents should be lodged for the judge's use. Hard copy binders and documents are due prior to trial calendar call.

In the Santa Clara complex courtroom, two 70" television screens display evidence to the jury and gallery; smaller screens are directed to the judge, clerk and witness. A projector is available upon request. To date, requests to give jurors individual tablets have been denied out of concern that the tablets will be disruptive. In Santa Cruz, counsel use a projector and video screen mounted directly across from the jury box to display evidence.

In both jurisdictions, connections for laptops and media players allow counsel to display evidence electronically with their own computers. The courts provide a digital document camera, and witnesses can access a touch screen to illustrate and modify documents that in turn may be printed and entered as exhibits. Attorneys in Santa Clara also may connect to the court reporter's computer to receive Live Note on their laptops or tablets.

Counsel should contact the technology department at each court before trial to discuss any technology concerns and arrive early to arrange their equipment.

Judge Kirwan recommends that

counsel set up Wi-Fi hotspots to maintain a consistent Internet connection during trial. In Santa Cruz, counsel also may obtain wireless Internet access for a small fee through the local bar association.

Both courts advise counsel to assess the physical limitations of the courtroom when analyzing the costs and risks of trial. Judge Kirwan has brought in extra tables and handled large capacity trials, but anticipates that ever larger, multiple party cases inevitably will be conducted off site. Judge Connolly discourages relocating trials due to substantial security and administrative issues and the impact on the judge's work on other files. Both agree that offsite trials will significantly increase costs.

Conclusion

Santa Clara County is almost seven times as large as Santa Cruz County in terms of general population, civil case filings and court budgets. While there are differences as to how each jurisdiction handles complex civil cases, there are also many similarities. For example, Santa Clara has a single department devoted to handling complex civil cases from filing through trial; the department adopted e-filing and e-service through its website solely for complex civil cases more than nine years ago. In contrast, most complex cases in Santa Cruz are assigned to one department for pre-trial management and another for trial. Following a recent system wide upgrade, filings now can be accessed online and e-filing is just months away. Both jurisdictions assign firm trial dates, urge the parties to cooperate with joint status reports and trial submissions and provide technical support at trial.



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