



Shaping civil-procedure legislation in Sacramento

MANDATORY MEDIATION FOR MATTERS OF \$150,000 OR LESS IS PROPOSED BY CERTAIN BAR ASSOCIATIONS AND SUPERIOR COURTS

Part of the work we do in the Legislature to protect your practice includes being actively engaged in civil-procedure bills. These bills may not on their face seem as alarming as a cap on damages, sweeping immunity, or other tort-reform measures, but they can have a large impact on how cases are litigated. Two of the most impactful civil-procedure bills CAOC is heavily involved in this year are AB 2049 (Pacheco) and SB 1141 (Niello).

AB 2049 (Pacheco) – Motion for summary judgment timeline

CAOC worked closely with the stakeholders, the California Defense Counsel and the California Judges Association, on AB 2049 (Pacheco), which will amend the timeline for motions for summary judgment.

AB 2049 seeks to amend the longstanding timeline for motions for summary judgment as outlined below. The aim of the bill is to adjust the timeline to allow for more time for the judge to review and consider the defense's reply brief.

After many discussions with the stakeholders, a careful review of case law and statutory language, we have reached a consensus with the above-mentioned groups on the following:

- (1) The motion for summary judgment timeline will be adjusted to move up the notice deadline by six days and adjusting all other deadlines to allow for the judges to have an additional six days to review and consider the defendant's reply.
- (2) Code of Civil Procedure 437c will be amended to prohibit the defense from bringing multiple motions for summary judgment absent good cause.
- (3) The statute will be amended to ensure that the defendant's reply brief does not include any new evidentiary matter, additional material facts, or separate statement not presented in the defendant's moving papers or the plaintiff's opposing papers.

Additionally, CAOC, CDC and CJA have agreed to continue discussions regarding reservations of hearing dates in our courts. Currently, it is increasingly difficult to obtain a hearing date for a motion for summary judgment. Often, the first available hearing date is many months after the currently set trial date, causing the trial to be pushed back many months, if not a year or more. CAOC plans to work with CDC and CJA on how changes in the reservation systems can be implemented for summary judgment motions.

SB 1141 (Niello) – Judicially mandated mediation case limits

CAOC opposed SB 1141 (Niello), sponsored by the California Conference of Bar Associations, which as introduced

allowed a judge to mandate mediation for cases where the amount in controversy is \$150,000 or less, an expansion from the current level of \$50,000. The bill was set to be heard on April 30 by the Senate Judiciary Committee, and support letters were submitted by the Judiciary Council and Los Angeles Superior Court, along with many business interests such as the California Chamber of Commerce and the tort reform group Civil Justice Association of California.

CAOC opposed the bill on the grounds that private mediation can be costly, may not be beneficial in all circumstances, and should be voluntary. Mandated mediation conflicts with the basic premise of mediation – two parties *voluntarily* coming together to seek a resolution on a case. Further, for mediation to lead to a resolution of a case, both parties must be willing to mediate. Most plaintiff lawyers and their clients voluntarily mediate when it's suggested by the defense. We raised concerns that increasing the ability of courts to order mediation pushes the ADR regime in the wrong direction of becoming a substitute for civil justice.

In response to concerns that mandatory mediation will unnecessarily delay trial dates for litigants and impose unreasonable costs for potentially unwilling participants, the author and the Senate Judiciary Committee, chaired by Senator Tom Umberg, agreed to the following amendments:

- Trial date must be set and mediation must happen at least 120 days before that date and not cause that date to be delayed.
- At least one party to the mandatory mediation must indicate they are interested in mediation.
- Counsel for each party attending the mediation must have full authority to settle the matter.
- The mandate of mediation cannot be dispositive of the case value (i.e., mandating mediation cannot limit amount in controversy to under \$150,000).
- Parties to the mediation must be given the option to stipulate to their own chosen mediator. However, the court must provide and pay for a mediator should the parties not stipulate otherwise.

With these amendments, CAOC moved from an oppose position to "working with the author" as the statutory language is drafted. CAOC is also requesting a sunset clause to cause the statute to automatically expire at a set date, to ensure that the Legislature must consider this issue in the future before making the statute permanent.

