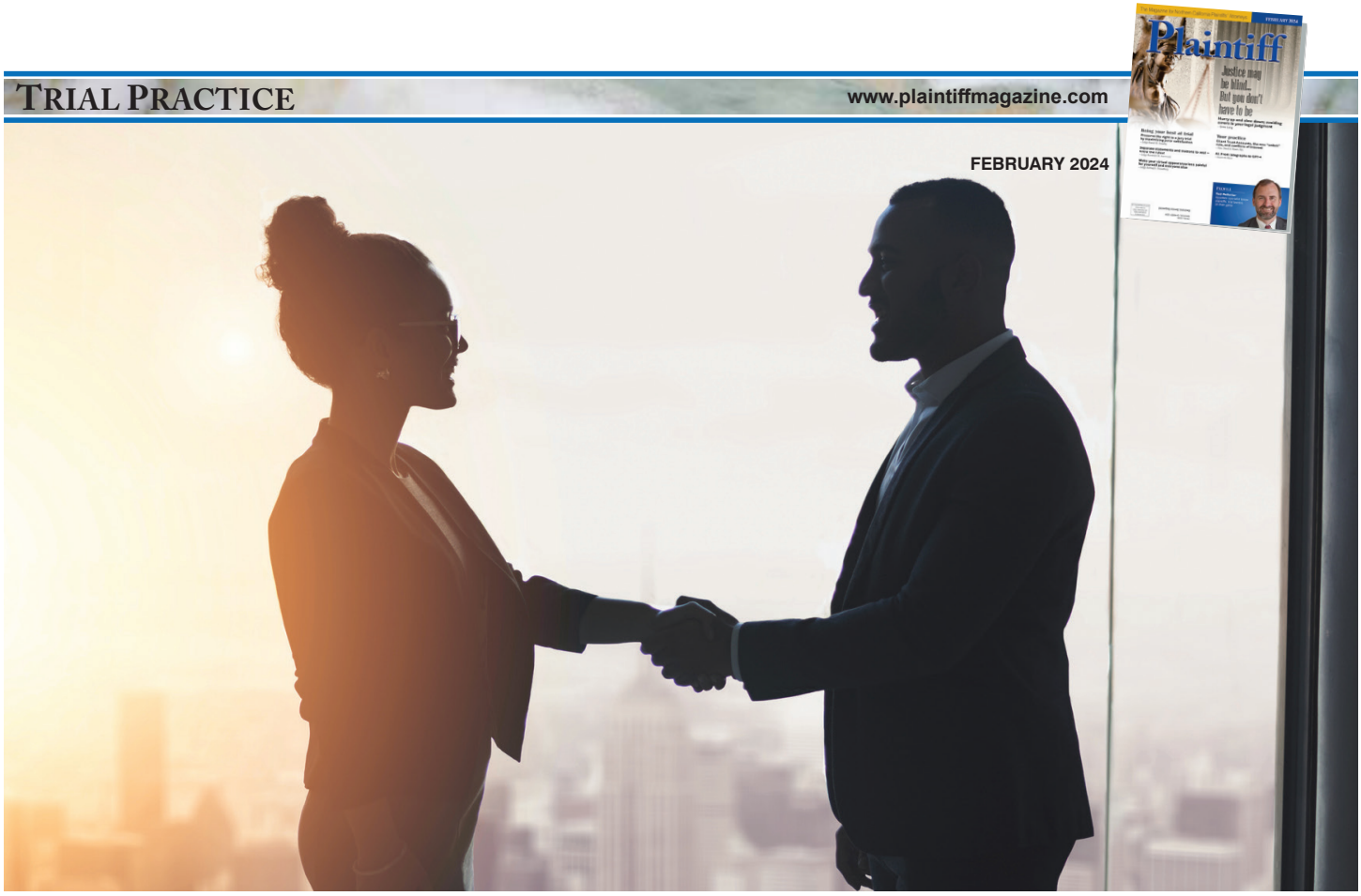


The civil practice of civil law

Let's take meet and confer more seriously, and more civilly

By Shana M. Nazarian

Having practiced law for two years at a firm handling various fields, including criminal, workers' compensation, appellate, and civil cases, I have observed that civility often seems more inherent in criminal law than in civil litigation. In workers' compensation and appellate law, the approach also tends to be more civil. The only place where conflict and confrontation are noticeably more pronounced is in the civil litigation arena.

Reflecting on my experiences, particularly the meet and confers I have conducted, I have come to realize that the purpose of the Code of Civil Procedure is to facilitate amicable resolutions. If we, as attorneys, properly utilize the meet and confer process and motions to compel when faced with unreasonableness, we could effectively curb destructive behavior. This experience has prompted me to reevaluate my understanding of what constitutes the 'civil' practice of law.

Codes/rules

In California, Code of Civil Procedure section 2016.040 mandates a good-faith attempt at informal resolution before compelling discovery responses. This is integral to the litigation process. However, non-compliance is often not pursued rigorously by civil attorneys, and judges are hesitant to enforce it.

The practice of meeting and conferring is crucial for efficient conflict resolution and fostering amicable solutions. This approach saves time and resources by addressing key issues early in litigation. This principle is reinforced at the federal level by Rule 26 of the Federal Rules of Civil Procedure, which emphasizes timely discussions.

Despite procedural rules and ethics codes mandating civil conduct, many attorneys struggle with meaningful meet and confers, partly due to courts' unwillingness to penalize tactical exploitation of these requirements. In my experience, conflict-driven cases, influenced by billable hours, can undermine the effectiveness of these sessions.

Sanctions

In California, Code of Civil Procedure section 128.7, mirroring Rule 11 of the Federal Rules of Civil Procedure, is designed to deter frivolous lawsuits and unwarranted extensions of litigation. This rule reinforces the principles set out in Rule 11, which mandates that legal filings be factually and legally substantial to prevent unnecessary litigation. Courts evaluate the claims' frivolity and reasonableness under Rule 11. However, in civil practice, the application of section 128.7 appears underutilized, highlighting a gap in the enforcement of these critical legal standards.

Additionally, California Code of Civil Procedure section 2023.020 imposes sanctions for failing to meet and confer in good faith, regardless of the motion's outcome. This underlines the importance of genuine meet and confer efforts,

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bolstering the imperative for cooperation in legal practices. These provisions form a powerful framework to uphold high standards in legal practice and dispute resolution.

California's legal framework emphasizes civil engagement among lawyers and provides mechanisms for judicial enforcement. Cases such as *Nguyen v. City of Los Angeles*, Case No. B321033 (2d Dist., Div. 5 July 31, 2023), where a $10,000 discovery sanction was imposed, highlight the repercussions of failing to meaningfully engage in meet and confer sessions. Similarly, *Snoeck v. ExakTime Innovations, Inc*. (2023) 96 Cal.App.5th 908 highlights the legal implications of non-compliance with these mandates.

Despite section 128.7's existence, its application is not consistently enforced by civil attorneys, and judges often show reluctance in enforcing it. For the civil legal arena to improve, a thorough application of these laws and codes is crucial. Meeting and conferring offers several strategic advantages, including time efficiency, cost reduction, and improved communication. However, significant consequences arise from non-compliance with these standards.

Benefits of meeting and conferring

Time efficiency

A primary benefit of meeting and conferring is its ability to save time, allowing for a faster resolution of disputes. This efficiency is most notable when parties engage constructively, avoiding adversarial tactics. Rule 26 highlights the important role of early and effective communication in facilitating smoother legal proceedings.

There is an increasing trend towards encouraging parties to resolve as many issues as possible through direct dialogue, rather than through lengthy written exchanges that often do not constitute genuine "meeting and conferring." This shift away from written communications has been instrumental in reducing the number of motions filed, revealing the effectiveness of true meeting and conferring in dispute resolution.

Cost reduction

Meeting and conferring can significantly decrease the legal costs associated with litigation, offering substantial financial relief, especially to clients with escalating legal fees. This approach streamlines dispute resolution outside of court, thus reducing legal expenses. Moreover, it prevents the need for costly motions, hearings, and trials, allowing for more efficient solution negotiations. Often, this approach leads to quicker settlements, further reducing the financial impact on all parties.

However, it is important to note that some attorneys may be reluctant to reduce costs due to billing pressures. Unfortunately, many cases are driven by conflict, where an attorney's motivation for billable hours may conflict with the opportunity to reduce costs through effective meet and confer sessions. This situation is often compounded by a court's hesitance to penalize those who exploit the system, creating a challenging dynamic in the pursuit of cost-effective legal proceedings.

Improved communication with counsel

Regular interaction between opposing counsel enhances understanding and dispute resolution. Open communication leads to avenues for negotiation and mutual agreement. My experience has shown that regular interaction and adherence to legal codes are key to successful outcomes and rewarding relationships in law. Consistent engagement and thorough preparation, result in stronger relationships and transformative outcomes. This approach facilitates more effective resolutions and builds a foundation of respect and understanding, enhancing the legal process. Productive discussions, especially in situations like negotiating motions in limine, can foster meaningful conversations and successful negotiations.

In comparison, from my experience, criminal attorneys often have better relationships with opposing counsel than civil attorneys, whose approach is more adversarial. For many, the concept of working collaboratively with opposing counsel can represent a significant shift in practice. Emphasizing open dialogue in the meet and confer process is crucial, ensuring a balanced exchange where client interests are adequately represented. Engaging in this way promotes a constructive exchange and also paves the way for more amicable resolutions.

Improved communication though regular and respectful interaction significantly enhances client satisfaction. Clients benefit from effective representation as open communication leads to a more thorough understanding of their needs, improving the overall quality of legal services provided.

Consequences of failing to meet and confer

Failing to meet and confer with opposing counsel can lead to significant judicial repercussions. For instance, in the case of *Mikron Industries v. Hurd Windows & Doors Inc*., the court underscored the seriousness of failing to meet the obligations of Rule 26(c) by denying a motion due to the lack of sincere meet and confer sessions. (*Mikron Industries v. Hurd Windows & Doors Inc*, No. C07-0532RSL (W.D. Wash. Aug. 18, 2008).) Non-compliance with Rule 26 has the potential for courts to impose sanctions or refuse motions when they determine that a meet and confer could have resolved the issue.

In California, section 2023.020 addresses non-compliance by mandating sanctions for failing to meet and confer in good faith, regardless of the motion's outcome, emphasizing the importance of these efforts. Similarly, Rule 11 mandates factually and legally sound filings, highlighting the critical nature of compliance in legal practices. Inadequate engagement in the meet and confer process can lead to serious consequences, highlighting the importance of maintaining cooperation and integrity in legal proceedings.

Conclusion

The practice of meeting and conferring serves as a strategic tool in legal proceedings,

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offering benefits such as enhanced time efficiency, reduced costs, and improved communication. Engaging in this process in good faith is evident, as failure to do so can result in significant consequences. Civil lawyers and judges must actively reinforce and promote this process, fostering civility and professionalism within civil legal practice. Adherence to these practices and related laws is key for improving the quality and civility of the civil legal arena.

If we, as attorneys, properly utilize the meet and confer process, including motions to compel when faced with unreasonableness, we could help curb destructive behavior. Ultimately, this practice symbolizes a commitment to collaborative conflict resolution, a key aspect in advancing justice and client advocacy in today's legal landscape.

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