

# Poco loco rules



**Benjamin G. Shatz**

Manatt, Phelps & Phillips, LLP

Benjamin is a certified specialist in appellate law who co-chairs the Appellate Practice Group at Manatt in the firm's Los Angeles office.

**EXCEPTIONALLY APPEALING**

In last year's hit movie "Coco," a young guitar-hero journeys to the land of the dead where he finds things (and performs a ditty titled) *un poco loco* (a little crazy). While not quite a trip to Hades, litigators sometimes find themselves handling appeals in unfamiliar courts, and may experience culture shock or worse, particularly with regard to local rules and practices.

California's six appellate districts each has its own local rules and procedures. The local variations between California's appellate courts are not nearly as drastic as those among the 13 federal appellate circuits. Indeed most districts have very few local rules and many of those rules do not concern civil appeals. Nonetheless, there are significant potholes on certain local routes. The following quick jaunt highlights some of the more interesting and important local appellate attractions. The traditional admonition adheres: When entering a new jurisdiction, be sure to read all local rules, miscellaneous orders, internal operating procedures, clerk's notices, website pages and traffic signs.

With [16 local rules](#), the 1st District wins for "most local rules." But there are no especially fatal traps for the unwary. Rule 4 governs motions for stipulated reversals, which are fairly rare. Rule 7 addresses motions to augment (a popular topic for local rules), and requires such motions by appellants within 30 days from the filing of the record; respondents have 30 days from the filing of the opening brief. "Thereafter, motions to augment will only be entertained upon a showing of good cause."

The 2nd District has [seven active local rules](#). Rule 2 on motions to augment mimics the 1st District's rule, but gives appellants 40 days. Rule 3 governs designating the record in civil appeals, and requires a bit more information than the statewide rules of court. To ensure compliance, the court has created a local Form 3 (2DCA/APP-003) that should be used instead of the judicial council form for record designations. Indeed, the 2nd District has a dozen of its own local forms, which are very useful for dealing with common situations (e.g., stipulated extensions and dismissals, extension applications, and augmentation). Use them! (But be careful about using them outside the 2nd District, where they are not always welcome.) Rule 4 is designed to make motion practice easier for the court: "Any motion or application filed with this court must be accompanied by a proposed order. Failure to comply with this local rule may result in the denial of the motion or application."

The 3rd District has [six local rules](#), but they are extremely "disruptive" in popular parlance, or as we say at Exceptionally Appealing, "exceptional." Rule 1 governs the court's mediation program for civil appeals (another popular topic for local rules), which began in 2006. Under this rule, when a notice of appeal is filed, the usual rules of court "requiring designation of the record, payment of estimated costs of preparation of the record, stipulating to proceeding with the original superior court file, and submission of a proposed briefing schedule, are suspended." This is a huge exception to ordinary practice. Normally, an appellant has 10 days after filing a notice of appeal to designate the record. But in 3rd District appeals, an appellant should *not* file a record designation yet. Instead, appellants have 15 days from the superior court clerk's notice of notice of appeal to file a Civil Appeals Mediation Statement. Once that CAMS is filed, respondent then has 10 days to file a similar form. Only after the case is rejected from the mediation program does the timeline for record designation kick in. This local rule probably trips up many out-of-towners, who, relying on the usual practice and court rule, attempt to designate a record shortly after filing an appeal.

Rule 3 on oral arguments provides: "Each side is allowed 15 minutes for oral argument. Where there are more than two parties, a 'side' consists of all parties whose interests are not adverse." Whoa! Doesn't Rule of Court 8.258(c)(2) guarantee that "[e]ach side is allowed 30 minutes for argument"? Well, yes and no, because that rule begins: "Unless the court provides otherwise by local rule or order," allowing courts to shorten argument time by local practice. The 3rd District has done this expressly by rule. That rule does allow parties to request additional time by asking in writing within 10 days of the order scheduling the argument.

Rule 4 concerns judicial notice of legislative history. Situated in our state's capital, the 3rd District often hears appeals invoking legislative history. The district's seminal precedent on judicial notice of such history is *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26 (2005). Rule 4 essentially directs counsel to follow that authority and expressly requires that when seeking judicial notice of legislative history documents, parties "must identify each such document as a separate exhibit and must provide legal authority supporting the consideration of each document as cognizable legislative history."

The 3rd District has no local forms for counsel. Even requesting oral argument requires drafting a letter, rather than filling out a form, as in other districts. But there is a local form for trial court clerks and court reporters to request extensions of time to for record preparation.

A final 3rd District peculiarity is that like the Supreme Court, but unlike every other district, its online dockets do not have a "Scheduled Actions" link to a Future Scheduled Actions page, which is often very handy in checking the status or next deadlines in an appeal. Instead, the 3rd District clerks typically insert future due dates into the regular entries on the "Docket (Register of Actions)."

The 4th District has only [five local rules](#), though Rule 4 about civil settlement conference procedures applies only to Division 2. Rule 1 requires personal delivery or other expeditious service of writ petitions seeking an immediate stay. Rule 1 also requests that parties not file preliminary oppositions to writ petitions, but instead wait to hear from the court.

Division 2 has its tentative opinion program (discussed in other Exceptionally Appealing columns) as well as a large collection of local Miscellaneous Orders. Divisions 1 and 2 have settlement programs, but Division 3 discontinued its program in 2011.

Divisions 1 and 2 also have Miscellaneous Orders (Nos. 061218 and 14-15, respectively) limiting oral argument to 15 minutes per side. The various divisions also have some nifty local forms (e.g., for dealing with settlements, stipulated dismissals, and the like).

The 5th District has [six active local rules](#) as well as some of its own forms, including a writ information sheet. Rule 1 concerns motions to augment, and mirrors the 2nd District's Rule 2. Fifth District Rule 2 outlines the court's mediation program and requires that parties file a Civil Appeal Case Screening Questionnaire within 10 days of the clerk mailing the form.

Rule 3 concerns writ petitions: "All petitions for extraordinary writs, other than habeas corpus, shall be accompanied by a properly completed face sheet, the Appellate Court Writ Petition Information Sheet." This rule -- in effect since 1982 -- has been tripping up writ petitioners for decades.

Finally, the 6th District has only [three local rules](#). Rule 1 governs the court's mediation program (which, after several years of inactivity, is once again operational) and requires all parties in civil appeals to file and serve a Mediation Statement Form within 15 days of the clerk sending notice that the court has received the notice of appeal. Also, Miscellaneous Order 17-01 requires that motions to augment be accompanied by a proposed order enumerating each item requested, and requires counsel to use the court's local "Augmentation Order" Form 6DCA-002.

"Coco" won a Best Original Song Oscar for "Remember Me." That's the tune and mantra that Exceptional Lawyers should be hearing when venturing to an unfamiliar court: Remember to check local rules and procedures to avoid an unexpected voyage to *la tierra de los apelaciones muertos* -- the underworld where dead writs and appeals eternally rue counsel's carelessness.