

Sotomayor Law

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Mediation, Arbitration and Business Dispute Services

Danger Zone in California Civil Trial Courts – Private Mediation Does Not Toll the Five-Year Period for Bringing a Case to Trial

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It's back. That risky zone in which a case can sneak past you and be subject to *mandatory* dismissal for the plaintiff's failure to bring it to trial within five years. California Code of Civil Procedure § 583.310. Most of us never thought we would see the return of that pesky problem after the Los Angeles County Superior Court instituted the one-judge-one-case approach that created tremendous efficiencies in case management and got most parties through trial in under two years.

But if you're a lawyer who practices in the Los Angeles County Superior Courts, you know that the budget cuts forced the Court to so drastically reduce or eliminate services that the reduction also eliminated services that helped resolve cases sooner rather than later. So that means there are fewer courtrooms available for trials, and resulting delays pushing trials up against the five-year deadline.

There are statutory exceptions to the requirement; for example, participation in a court-sponsored mediation program may extend the time period. Specifically, section 1775.7(b) provides: "If an action is or remains **submitted to mediation** pursuant to this title more than four years and six months after the plaintiff has filed the action, then the time beginning on the date four years and six months after the plaintiff has filed the action and ending on the date on which a statement of nonagreement is filed pursuant to Section 1775.9 shall not be included in computing the five-year period specified in Section 583.310." (§ 1775.7, subd. (b).) (emphasis added)

The California Court of Appeal is holding parties' feet to the fire in enforcing the mandatory dismissal. In *Castillo v. DHL Express (USA)* (Ct. of Appeal Case No. B258432, filed 12/15/15; part. pub. order 1/14/16), the Court of Appeal has held that participation in **private** mediation – as opposed to a mediation program administered by the court – does **not** toll the five-year period.

At issue in *Castillo* was whether the case had been "submitted to mediation" pursuant to Section 1775.7(b). The Court concluded it had not been, finding that (1) the trial court did not, and could not, "order" the case to mediation given the amount in controversy, (2) the trial judge said that it could not order the case to mediation, and (3) the trial court "referred" the case to mediation because the parties agreed to private mediation.

In a strict interpretation of the Court rules as well as the facts, the Court found that the parties had not stipulated to submit the case to mediation because there was no stipulation in the record and none of the court orders could be construed as reflecting a stipulation. The Court flatly rejected the plaintiff's argument that Section 1775.7(b) should be expansively interpreted to include **any** agreement to pursue mediation in order to trigger the automatic tolling provision. An extensive analysis of the statute

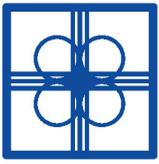
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concluded that its provisions could only apply to a mediation program established and administered by the courts. In the unpublished portion of the opinion, the Court also held that the trial judge did not abuse his discretion in finding that the plaintiff did not establish that it was impossible, impracticable, or futile to bring the case to trial within five years. The appellate court affirmed Superior Court Judge Robert L. Hess' dismissal of plaintiff's wage and hour class action and individual complaint.

The simple answer to the problem appears in footnote 5 (albeit somewhat cynically under the circumstances). The footnote reads: "Nothing in this opinion should be construed to impact the parties' ability to stipulate to a stay in the proceedings while they engage in mediation. (See § 583.330.)"

The simple answer certainly does not save the day. The day will be saved when the parties again look to alternatives to resolving this case in the courts, perhaps in the context of mediation again. It's not over until it's over.

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