

Case Name: G. Mitchell Kirk, et al. v. City of Morgan Hill, et al.

Date Notice of Appeal Filed: January 12, 2021

Case Number:

H048745

**COURT OF APPEAL, SIXTH APPELLATE DISTRICT
MEDIATION STATEMENT FORM**

You must return this form to the Clerk of the Court of Appeal within 15 days after the clerk mails you the notification of the filing of the notice of appeal required under rule 8.100(e)(1).

(Ct. App., Sixth Dist., Local Rules, rule 1, subd. (e)(2).)

This Form is submitted on behalf of: ☒ Appellant ☐ Respondent ☐ Cross-Appellant ☐ Cross-Respondent

Your Name: Anna M. Barvir

Represent: ☐ Self ☒ (party:) G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated

Do you *and your client* believe that this case has a reasonably good chance of settling at an appellate court mediation?

☐ Yes If "yes," why do you think so? _____

☒ No If "no," why do you think so? This case is a challenge to a local ordinance on preemption grounds, and the City will not voluntarily repeal the law.

☐ I/We wish ☒ **DO NOT** wish to be considered for inclusion in the Court's Mediation Program.

If NOT, why not? Requires judicial review

Subject Matter of the Appeal (Check all that apply):

☐ Attorney's Fees ☐ Construction ☐ Family Law ☐ Intellectual Property ☐ Personal Injury ☐ Prof. Negligence

☐ Business/Contract ☐ Employment ☐ Insurance ☐ Medical Malpractice ☐ Probate ☐ Real Estate

☒ Other (specify): Declaratory and Injunctive Relief re: Preemption of Local Ordinance

Trial Court: Superior Court of California, County of Santa Clara

Trial Judge: Peter H. Kirwan

The appealable judgment/order resulted from:

☐ Jury Trial ☐ Court Trial ☒ Summary Judgment ☐ Demurrer ☐ Dismissal ☐ Nonsuit ☐ Arbitration Award

☐ Mandamus ☐ Order (specify): _____ ☐ Other (specify): _____

☐ We have previously participated in some form of ADR

☒ We have not participated in ADR

Please Specify: _____

Provide a concise statement of the case, including a brief factual and procedural history. List the issues you expect to raise on appeal (if any): **(use additional sheets if necessary)**

Appellants challenge Morgan Hill Municipal Code 9.04.030, requiring the reporting of lost or stolen firearms within 48 hours, as preempted by state law.

Please explain briefly why this appeal should be selected for the mediation program.

Appellants do not believe this case has any likelihood of settling and, thus, do not believe it should be selected for the mediation program.

Identify all persons, other than the parties, whose agreement is necessary for the settlement of this appeal and any related litigation or dispute (e.g., an insurance adjuster, spouse, or lien holder):

None

Please attach a separate sheet with your contact information, including name, firm name, address, phone, fax and email address.

ANY INFORMATION PROVIDED HEREIN WILL BE USED FOR THE SOLE PURPOSE OF SCREENING YOUR APPEAL FOR INCLUSION IN THE MEDIATION PROGRAM. IT WILL REMAIN **CONFIDENTIAL** AND WILL NOT BE ENTERED IN THE COURT DOCKET OR FILE. THE COURT WILL NOT DEEM AN OMISSION FROM THIS STATEMENT TO BE A WAIVER OR FORFEITURE OF ANY CLAIM ON APPEAL.

Rev.10/2017

Document received by the CA 6th District Court of Appeal.

California Rules of Court, Sixth Appellate District

Rule 1. MEDIATION

- (a) [Application of rule] This rule is adopted pursuant to rule 8.248, California Rules of Court, and shall apply to all civil appeals filed in the Sixth District Court of Appeal.
- (b) [Purpose of Mediation Program] To aid the expeditious and just resolution of civil appeals, the Court of Appeal for the Sixth District has established a mediation Program ("Program"). Procedures for mediation and operation of the Program shall be promulgated by and the Program shall be administered by the Administrative Presiding Justice or a designated Supervising Justice, and their designated staff.
- (c) [Scope of Mediation Program] At the court's discretion, any civil appeal may be placed in the Program if selected by the court or requested in writing by a party. The Court may, at its discretion, remove an appeal from the Program.
- (d) [Mediators]
- (1) The court shall maintain a list of attorneys who have developed expertise in specified areas of law, are generally respected in the legal community, and are willing to mediate cases at this court. These attorneys shall be designated as mediators and preside over mediations conducted within the scope of the Program.
 - (2) A justice or assigned justice of this court may, at the court's discretion, be designated as a mediator and preside over a mediation. A justice or assigned justice who participates in a mediation that does not result in complete settlement shall not thereafter participate in any way in the consideration or disposition of the case on its merits.
 - (3) A justice or assigned justice of the court will not be disqualified to participate in the consideration or disposition of a case on its merits because he or she has ruled on a request for a mediation, ordered that a mediation be held, signed orders granting relief from default for an act required under this rule, extended or shortened any time period specified in this rule, or otherwise signed an order concerning a procedural aspect of the mediation process.
- (e) [General Mediation Program Procedure]
- (1) Upon receipt of notice of the filing of a notice of a civil appeal, the clerk of this court shall mail a copy of this rule and a Mediation Statement Form to counsel for all parties.
 - (2) The Mediation Statement Form shall be returned to this court within 15 days from the date of mailing. Each party shall also serve a copy of their completed Mediation Statement Form on all other parties.
 - (3) The Mediation Statement Form shall be transmitted by the Clerk to the Program and shall not be entered into the court file.
 - (4) Within 15 days of receipt of the Mediation Statement Forms, the court shall notify the parties when a case is selected for mediation and furnish the name, address and telephone number of the mediator selected for the mediation. The court shall provide three possible dates for mediation.
 - (5) The parties shall meet and confer to agree on the date of mediation, and inform the court within 5 days of the date selected for mediation. The court will issue written notice of the date and time of the mediation. The mediator, with the approval of the Court, may, for good cause, postpone or continue a mediation session to a date certain.
 - (6) The Court may replace a selected mediator upon written request by a party supported by a showing of good cause or upon request of the mediator.
 - (7) Immediately upon acceptance of a case into the Program, all further proceedings, including the filing of briefs, shall be suspended for 90 days. However, this rule shall not suspend preparation of the appellate record unless a specific order is issued directing suspension of record preparation. Upon the expiration of the stay, the appeal shall be reinstated to active status on the court's docket. Any request for further stay shall be granted only upon written application to the court and only upon a showing of good cause.
 - (8) Mediation services shall be furnished by the Court without fee to the parties for up to a total of 4 hours. Any further mediation services shall be at the discretion of the mediator, on such terms as the mediator and the parties may agree upon, and consistent with the provisions of this rule.
- (f) [Mediation Hearing and Sanctions]
- (1) All parties and their counsel of record must attend all mediation sessions in person with full settlement authority. If the party is not an individual, then a party representative with full authority to settle all appeals and cross-appeals must attend all mediation sessions in person, in addition to counsel. If a party has potential insurance coverage applicable to any of the issues in dispute, a representative of each insurance carrier whose policy may apply must also attend all mediation sessions in person, with full settlement authority. Any exception to this requirement must be approved in writing by the Court. Failure to attend may result in the imposition of sanctions against any party or counsel, including dismissal.
 - (2) The mediator may invite parties to the action who are not parties to the appeal, or any person who has an interest in the action, to attend the mediation if it appears to the mediator that their presence may facilitate settlement of the case. Any party to the appeal may serve and file a written request for the attendance of such a party or person at least 15 days before the mediation.
 - (3) Counsel shall confer with their clients in advance and be thoroughly familiar with the case and prepared to present their contentions in detail.
 - (4) The presiding justice, a justice designated by the presiding justice, or the mediator may excuse a client's personal attendance upon request and a showing that hardship or unusual circumstances make the client's attendance impossible or impractical. If personal attendance is excused, counsel either shall have obtained full authority to agree to a settlement that binds the client or the client shall be available for consultation by telephone.
 - (5) The mediator may require parties or their counsel to furnish information, documents, records or other items specified by the mediator.
- (g) [Post Mediation Procedure]
- (1) No later than 10 days after completion of mediation, the mediator shall submit to the Court a Mediation Attendance Form, listing all participants in the mediation, and a brief summary of the procedural outcome of the mediation.
 - (2) Each party and their counsel shall separately complete and submit to the Court evaluations of the mediation and the mediator on a form provided by the Court.
 - (3) The parties and their counsel shall promptly take the steps necessary to implement the agreements reached in mediation. An appellant who has settled must immediately serve and file a notice of settlement in the Court of Appeal and, thereafter, must seek abandonment or dismissal of the appeal as provided in the California Rules of Court. The notice of settlement shall specify the allocation of costs on appeal and state whether the remittitur is to issue immediately.
 - (4) Upon receiving notification that no agreement was reached at mediation, this court will immediately vacate the stay and reinstate the appeal to active status on the court's docket.
- (h) [Confidentiality] Except as otherwise required by law, information disclosed to the mediator, the parties, counsel, or any other participant in the mediation, shall be confidential and shall not be disclosed to anyone not participating in the mediation Program.
- (i) [Ethical Standards] Mediators shall adhere to the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set forth in the California Rules of Court.
- (j) [Appellate Process] Parties and counsel shall comply with all rules applicable to processing appeals while concurrently participating in the mediation Program.
- (k) [Sanctions] Monetary sanctions may be imposed by the Administrative Presiding Justice or Supervising Justice for failure to comply with these rules.

Rule 1 amended effective June 11, 2010; adopted effective February 5, 2010; former Rule 1 repealed effective March 2, 2007.

APPELLANTS' ATTORNEY CONTACT INFORMATION

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PROOF OF ELECTRONIC SERVICE (Court of Appeal)

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.

Case Name: Kirk, et al. v. City of Morgan Hill, et al.

Court of Appeal Case Number: H048745

Superior Court Case Number: 19CV346360

1. At the time of service I was at least 18 years of age.
 2. a. My ☐ residence ☒ business address is (specify):
180 East Ocean Blvd., Suite 200, Long Beach, CA 90802
 - b. My electronic service address is (specify): lpalmerin@michellawyers.com
 3. I electronically served the following documents (exact titles):
Mediation Statement Form
 4. I electronically served the documents listed in 3. as follows:
 - a. Name of person served: Anthony P. Schoenberg
On behalf of (name or names of parties represented, if person served is an attorney):
City of Morgan Hill, Morgan Hill Chief of Police David Swing, Morgan Hill City Clerk Irma Torrez
 - b. Electronic service address of person served: tschoenberg@fbm.com
 - c. On (date): January 29, 2021
- ☐ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment (write "APP-009E, Item 4" at the top of the page).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 29, 2021

Laura Palmerin

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)