

California Expedited Jury Trials

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Thank you for this opportunity to speak about streamlined jury trials and in particular California Expedited Jury Trials. This trend of alternative, streamlined methods promoting speedy and economic resolution of cases and conserving judicial resources is sweeping the country as short, summary and expedited jury trials arise throughout the country.

- **Arizona** - Maricopa County (Phoenix) *Short Trial Benchbook*
- **California** - Expedited Jury Trials (CCP 630.01 et. seq.)
- **Florida** - §45.075 Voluntary stipulation of parties
- **Nevada** - Nev. Short Trial R. 1(b) – Voluntary but can be mandatory in jurisdictions subject to mandatory arb.
- **New Jersey** - Voluntary Consent Order
- **New York** - N.Y. C.P.L.R. 3031 NY Simplified Procedure
- **Oregon** - *ORS UTCR 5.150 et. seq.* (Multnomah County)
- **South Carolina** - (Fast Track Jury Trial) Voluntary
- **Utah** - § 78B-3-902(2) (Voluntary)

- USDCs- No. District of Ca.; Western Pennsylvania, Nevada
- Texas – Mandatory in cases under \$100,000 (Rule of Civ. Pro. 169)
I'm also aware of ad hoc agreements in other areas. In Chicago for example litigants are stipulating to one day jury trials before judges very similar to the California model in terms of evidence, agreements, limits, agreed value and no appeal.

In 2013- the Texas Supreme Court promulgated mandatory Summary Trials in cases valued at less than \$100,000.

California Code of Civil Procedure & Rules of Court

► VOLUNTARY EJTS

- CCP Sections 630.0–630.12
- California Rules of Court
Rules 3.1545–3.1552

► NEW-MANDATORY EJTs in Limited Jurisdiction cases

- CCP Sections 630.20– 630.30
effective 7/1/2016

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So, let's talk about California's Expedited Jury Trials [EJTs].

California Expedited Jury Trials are an alternative, streamlined method promoting speedy and economic resolution of cases and conserving judicial resources. An expedited jury trial is heard by a smaller jury, and imposes time limits with the goal is to complete the trial in one day.

A key feature of the expedited jury trial model is its flexibility, which allows the parties to enter into agreements governing the rules of procedure, including the manner and method of presenting evidence and high/low agreements on damages.

We'll talk about the nuts & bolts and more importantly why they provide advantages and are needed more than ever in this era of underfunded courts.

Borne from the Judicial Council ...rising costs of litigation squeezing out smaller value cases, all facets of the CIVIL justice system came together in a rare show of unity to create rules for

streamlined jury trials. This included the plaintiff's bar, the Assoc of So. Cal and No. Cal defense Counsel, Personal insurance Federation of Ca. ,Consumers Union, American Insurance Assoc. , Ca. Chamber of commerce ABOTA, the Courts and individual attorneys.,

This amazing unity lead to CCP Sections 630.01 et seq. and Rules of Court 3.1545 through 3.1552 which govern formal EJTs. Copies of these statutes and Rules have been provided in the materials. They really are rather simple.

VOLUNTARY EJTs

- ▶ Opt in with Consent Order
- ▶ Fixed elements:
 1. Short trial (3 hours each side)
Changing to 5 hours 7/1/16
 2. Smaller jury (8 jurors)
 3. Fewer peremptory challenges (3 per side)
 4. 1 hour for voir dire
 5. Jury decision is final

(extremely limited post-trial motions & appeals)

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What are the essentials? In a nutshell, an EJT is a consensual, binding jury trial before a reduced panel of jurors with the *goal* of completion in a day. One can think of an EJT as a voluntary, seven hour jury trial using 8 jurors. There are three (3) peremptory challenges per side and very limited appeal rights.

The process provides for great flexibility and encourages cooperation between counsel.

VOLUNTARY EJTs

- ▶ No limit on amount in controversy
- ▶ Same basic rules
 - Discovery (no limitations, cut offs same)
 - Experts procedures and rules
 - Costs
 - 3/4ths jurors = verdict
- ▶ Differences
 - Most post-trial motions waived
 - Right to appeal waived

Other key aspects to the statutory scheme you should know are:

1. No limit on amount in controversy.
2. Rules for Discovery, Experts, & Costs are same-- unless the parties agree otherwise.
3. Limited grounds for new trial and appeal.

VOLUNTARY EJTs

- ▶ Optional High/Low agreements
 - Not disclosed to jury
 - Mandatory disclosure to court in some situations (e.g. Minors)
- ▶ Insurance carriers
 - Must be informed and agree
 - Consent Order disclosure
 - Signature of carrier not required

The Code allows High/low agreements but that is not required.

If agreed to, the fact of a High/Low or the amounts are not disclosed to the jury and don't have to disclose to court except in certain situations involving pro pers, minors or incompetents- in which case court approval is necessary.

If an insurance carrier is involved the Consent Order must state the carrier is informed and agrees with EJT. No signature of a rep of the carrier is required. Just the statement of counsel the insurance carrier in on board in the Consent Order.

PROCEDURAL HIGHLIGHTS

► Consent Order

- Timing at least 30 days before trial
- Signatures of parties

◦ Stipulations?

- Customize terms of trial
- Issue/Evidentiary stipulations
- Modifications of time
- Allocations of time
- Limits on #, type of witnesses

Presently, EJTs are a voluntary procedure. The parties opt in by stipulation known as a Consent Order.

The Consent Order is filed at least 30 days before the scheduled trial but may be filed anytime before then and can thus provide the opportunity for the court to set the trial date. The Consent Order requires the signatures of the parties because of the agreements and waivers.

The Consent Order is where the parties can shape the trial itself through stipulations- such as limiting issues, the type and quantity of evidence, limiting the number or type of witnesses. Changing allocations of time.

JUDGES VERY RECEPTIVE

- ▶ Most judges allow great flexibility
- ▶ Accept modifications not in strict compliance

Take a poll of judges and you will find the vast majority are supportive of agreed to modifications of the technical rules about time allocations. Judges overwhelmingly support shortening trials by agreement of the parties.

Examples of modified EJTS include

1) allocating times differently

- 1) Agreeing to 4 hours per side instead of 3.
- 2) 4 hours for one side and 2 for the other.
- 2) Agreements filed less than 30 days,
- 3) Changes to timing of pre-trial exchanges etc.

If the attorneys /parties agree, the judges allow great flexibility.

PRE-TRIAL EXCHANGE

► 25 days before trial-

- Serve trial documents (Witness lists, Exhibits, Jury instructions, etc.)

► 20 Days before trial-

- Supplemental exchange, File/Lodge trial doc's, motions with court

There are formal pre-trial procedures and time lines. However....
Most have occurred less formally.

At 25 days prior to trial, the parties must exchange all documents, witness lists, copies of exhibits (except witnesses and exhibits just for impeachment or rebuttal), proposed jury questionnaires, motions in limine, jury instructions, verdict forms.

PRE-TRIAL CONFERENCE

► 15 Days before trial-

Pre-trial conference decides:

- Presentation of evidence
- Jury voir dire, instructions, special verdict forms
- Motions in limine
- Objections to evidence
- Time allocations
- Juror questionnaire use

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15 days before trial (unless modified by the Consent Order), the court is required to hold a pre-trial conference to rule on evidentiary objections that ordinarily would be made at trial. The court rules on motions in limine, jury instructions and any other matters necessary to expedite the trial time.

If there are no objections, the parties stipulate in writing to admissibility of evidence.

Juror questionnaires are also encouraged to speed up the delivery of baseline information. A sample, simple jury questionnaire is included in the written materials.

MANDATORY EJTs- JULY 2016

- ▶ Limited Jurisdiction cases (except unlawful detainees and forcible entry cases)
- ▶ Either party can OPT OUT in certain cases
- ▶ Appealable
- ▶ Fixed elements–
 - ▶ 5 hours per side including voir dire
 - ▶ 8 jurors & alternate
 - ▶ 4 peremptory challenges per side

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MANDATORY EJTs- JULY 2016

- ▶ Can OPT out if:
 - 1) Punitive damages
 - 2) Damages in excess of insurance policy
 - 3) Reservation of rights by carrier
 - 4) Claim reportable to governmental agency
 - 5) Moral turpitude affecting professional licensing
 - 6) Intentional conduct alleged
 - 7) Attorneys fees except Civil Code §1717
 - 8) Court finding of good cause. Good cause includes 5 hours insufficient & parties unable to stipulate to more time.

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MANDATORY EJTs- JULY 2016

- ▶ Same basic rules (unless parties stipulate otherwise)
 - Discovery (Limitations, cut offs)
 - Experts procedures and rules
 - Costs & attorneys fees
 - 3/4ths jurors = verdict
- ▶ **Optional High/Low agreements**
 - Not disclosed to jury
 - No mention of need for court approval for Minors and Incompetents)

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MANDATORY EJTs- JULY 2016

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EJT OUTCOMES

► Just Verdicts

- Proportion of plaintiffs to defense verdicts the same. (New York, Nevada, California, South Carolina)
- New York- 50/50 split; avg PI's verdict just over \$150,000.00
- LA Superior Court- First 18 months
 - 34 juries
 - 17 plaintiffs' verdicts
 - 16 defense verdicts
 - 1 mistrial

So what are the results? Well... when I last checked Before the budget cuts eliminated this data gathering.

LASC mid 2012 year ... 18 month period Jury Services division of LASC .

Other states with more experience in Shortened, Summary and Expedited Jury Trials report the results track traditional longer more expensive trials.

I can say for State Farm in California I am aware of over 30 EJTs now. The results mirror results in terms of win/loss percentage that I have tracked for 20 years in California.

The faster jury trial has no discernible advantage to one side or the other.

In other words. Just results.

EJT OUTCOMES

Jurors

Continue to take their role seriously & appreciate the focus on key areas of dispute.

Larger cases– Familiarity and confidence in procedure draws larger and larger cases.

In other words. Just results.

More willing and eager jurors.

MORE COMPLEX CASES

FASTER JURY TRIALS

Multi-district mass torts

Patent infringement

TRIAL BY AGREEMENT

Let me emphasize the strict 1 day trial statutory scheme is not matched for every trial. Their limited time are not well suited for complex lengthy litigation. However,.....

ADVANTAGES

- ▶ Save costs
- ▶ Limit issues/save discovery costs
- ▶ Less expensive than mediation
- ▶ More certain trial dates
- ▶ Juries instead of arbitrators

CASES WELL-SUITED FOR EJTS

- Single or limited issues
- Willingness to stipulate to some facts or issues
- Limited recoverability
 - Minimal insurance policy limits
- A high-low agreement is desirable
- Client insists on day in court

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CASES WELL-SUITED FOR EJTS

- Desire for more certain trial date
- Time sensitive – usual docket wait is prejudicial or undesirable
- Case value doesn't warrant live expert testimony
- Limited trial availability of witnesses/experts

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How to approach Opposing Counsel?

Questions?