

Expedited Jury Trials

**First-Hand Knowledge of
What You Need to Know**



Thursday, May 19, 2011

2:00pm - 5:30pm

Jonathan Club

ASCD
ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

Association of Southern California
Defense Counsel
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Provider: Association of Southern California Defense Counsel
Subject Matter/Title: Expedited Jury Trials – First-Hand Knowledge of What You Need to Know
Date and Time: May 19, 2011
Location: Jonathan Club – Los Angeles, Ca
Length of Activity: 3.0 hours

ELIGIBLE MCLE CREDIT:

TOTAL HOURS: 3.0

Legal Ethics: 0
Detection/Prevention of Substance Abuse or Mental Illness: 0
Elimination of Bias in the Legal Profession: 0

**TO BE COMPLETED BY THE ATTORNEY AFTER PARTICIPATION
IN THE ABOVE NAMED ACTIVITY:**

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE credit hours:

Total Hours: _____


(You may not claim credit for the following sub-fields unless the provider is granting credit in these areas above.)

Legal Ethics: _____
Detection/Prevention of Substance Abuse or Mental Illness: _____
Elimination of Bias in the Legal Profession: _____

Name:

Signature: _____

REMINDERS: Keep this record of attendance for four years. In the event that you are audited by the State Bar, you may be required to submit this record of attendance. Send this to the State Bar only if you are audited. You must sign in on the Official Record of Attendance for California MCLE maintained by this provider in order to qualify for California MCLE credits.

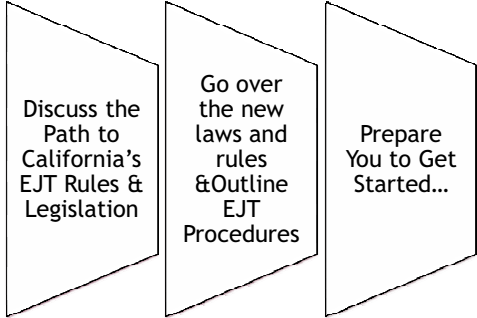


**ASCDC
MAY 19, 2011**

EXPEDITED JURY TRIALS: FIRST HAND KNOWLEDGE OF WHAT YOU NEED TO KNOW

Michael Belote, Esq.
Judge Mary Thornton House
Jesse D. Marr, Esq.

TODAY, WE PLAN TO

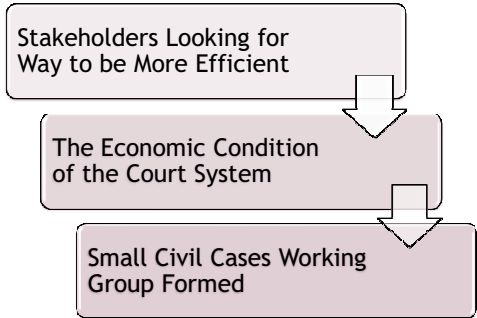


Discuss the Path to California's EJT Rules & Legislation

Go over the new laws and rules & Outline EJT Procedures

Prepare You to Get Started...

HISTORY

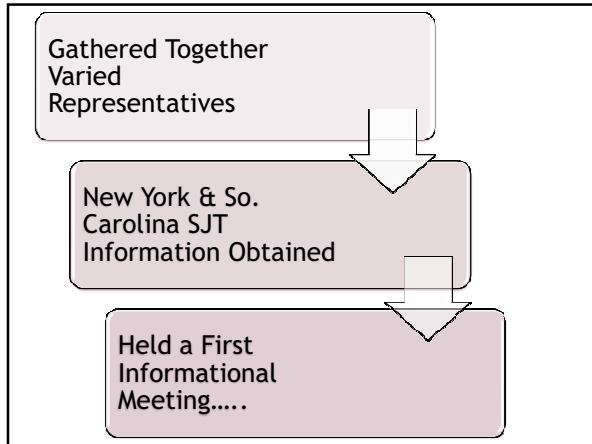


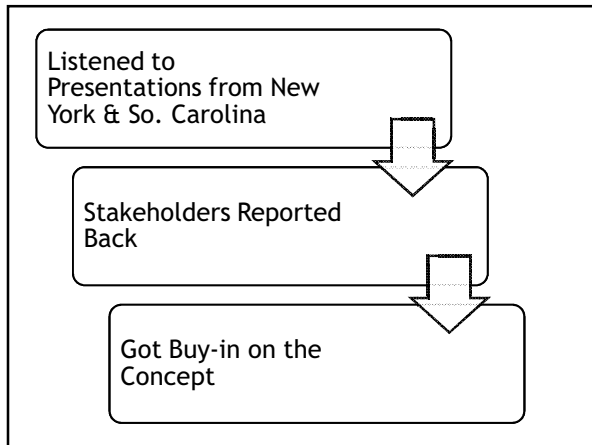
```
graph TD; A[Stakeholders Looking for Way to be More Efficient] --> B[The Economic Condition of the Court System]; B --> C[Small Civil Cases Working Group Formed];
```

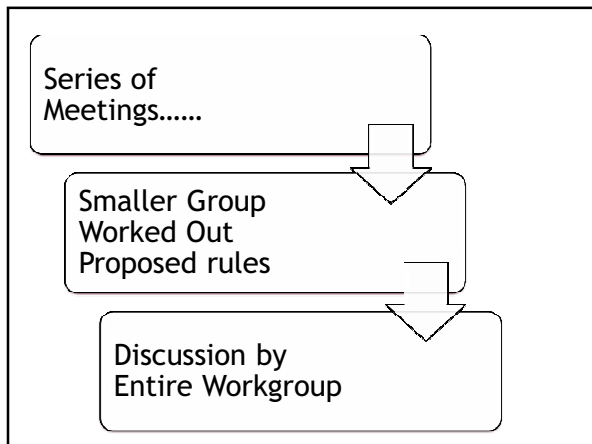
Stakeholders Looking for Way to be More Efficient

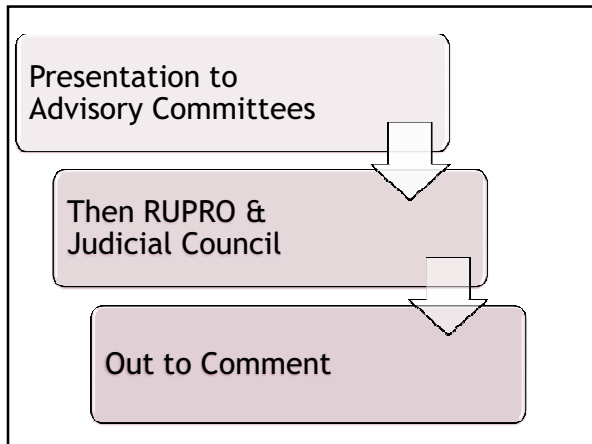
The Economic Condition of the Court System

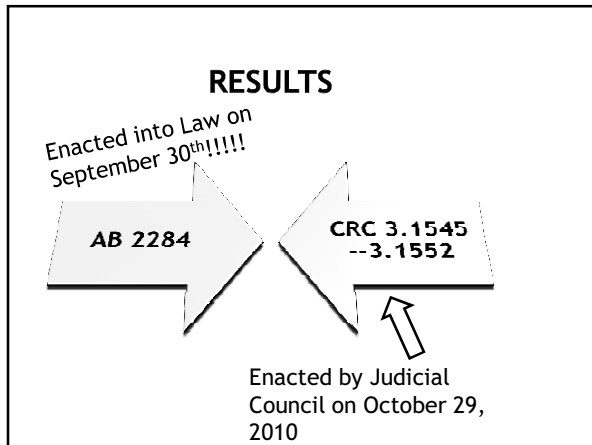
Small Civil Cases Working Group Formed

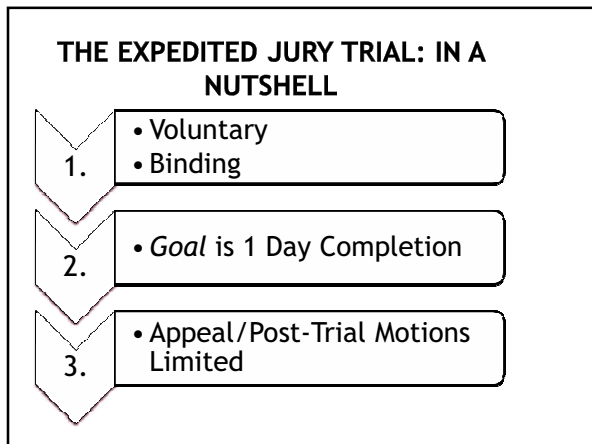


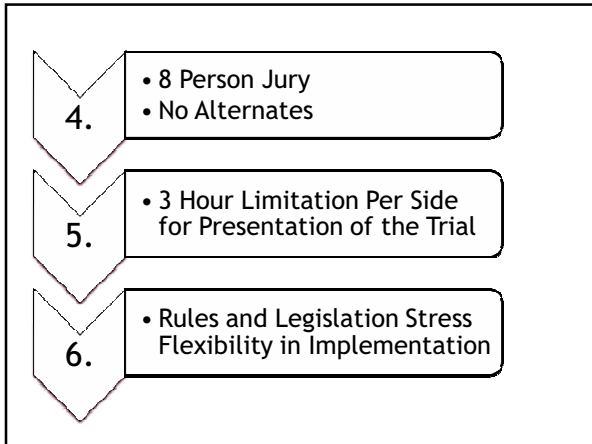


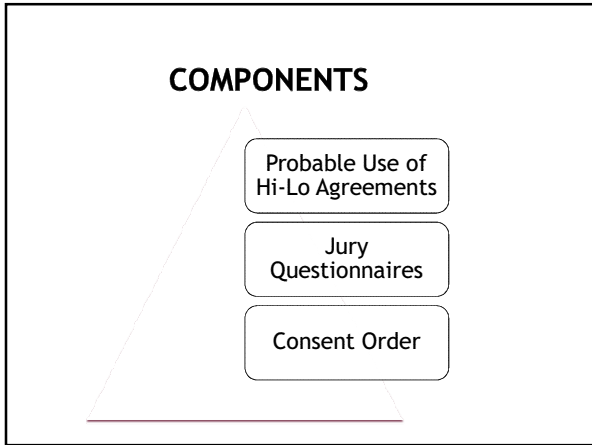


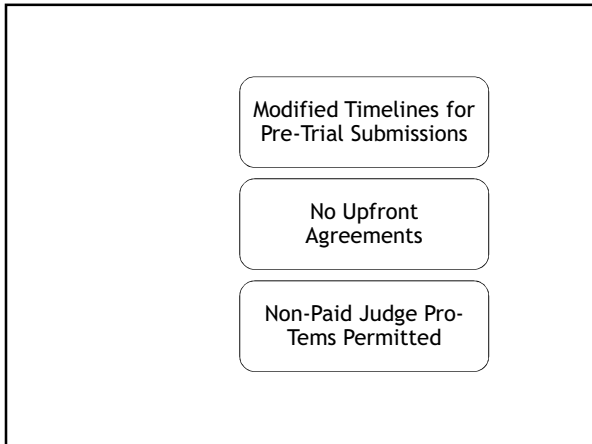







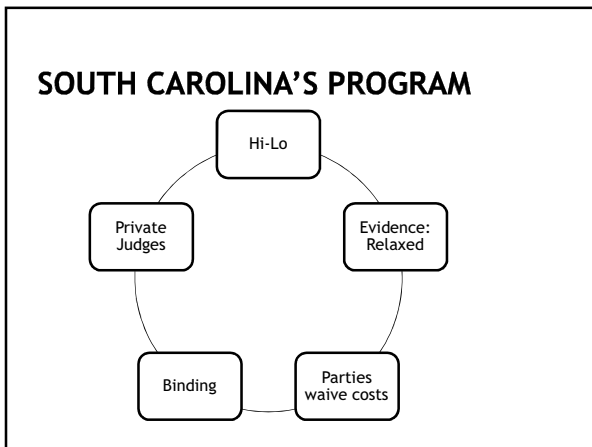




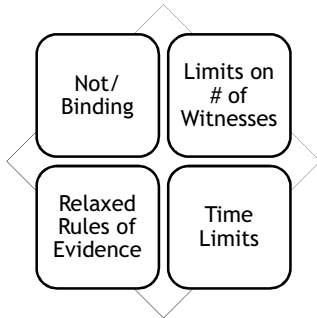


GROUNDS TO VOID		
Only Permitted When:		
Judge Misconduct Materially Affects Substantial Rights	Jury Misconduct	Corruption, Fraud, Undue Means

	WHAT WE LEARNED FROM NEW YORK & SOUTH CAROLINA
---	---



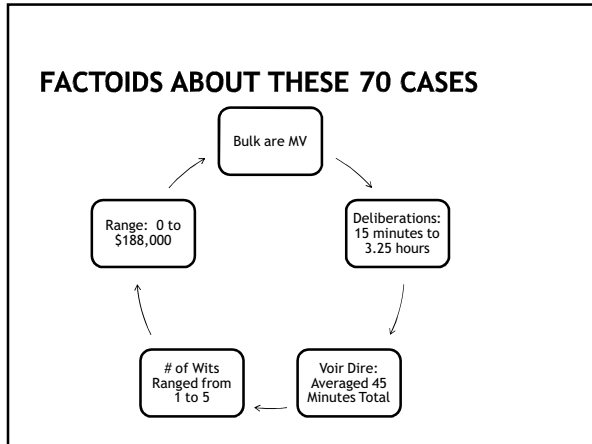
NEW YORK PROGRAM DIFFERENCES

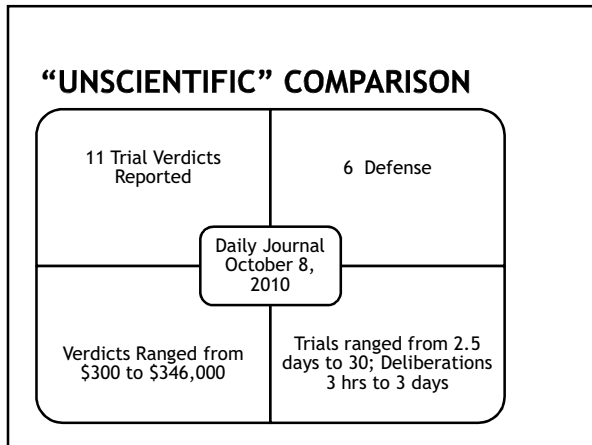


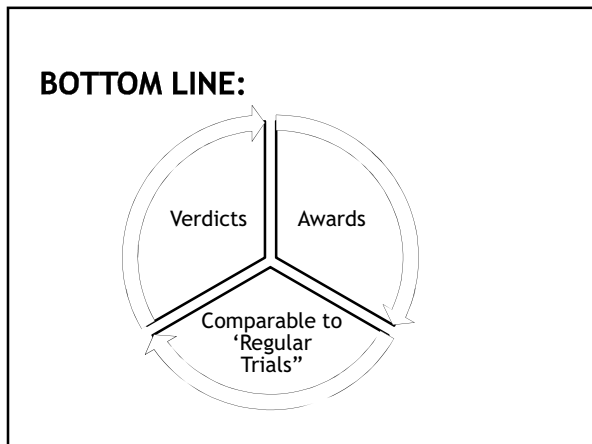
NEW YORK PROGRAM NUMBERS


Statistics-9/06 to 12/06	Statistics-1/07 to 2/07
26 Cases	16 Cases
6 □/20 ▲	8 □/8 ▲
Average Verdict: \$80,443	Average Verdict: \$54,750

Statistics: 3/07 to 4/07	Statistics: 5/07- 6/07
13 Cases	15 Cases
8 □/5 ▲	7 □/8 ▲
Average Verdict: \$51,077	Average Verdict: \$151,041







	<p>THE LEGISLATION AND THE RULES OF COURT</p> 
--	--

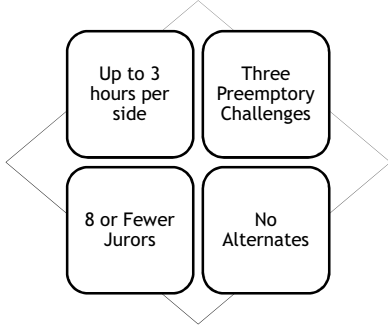
	<p>THE LEGISLATION—CCP §630.03</p> <div style="border: 1px solid black; border-radius: 10px; padding: 5px; margin-bottom: 10px;"><p>EJT: consensual, binding jury trial before a reduced jury panel & judge</p></div> <ul style="list-style-type: none">• All civil rules apply except for changes set forth in the legislation <div style="border: 1px solid black; border-radius: 10px; padding: 5px; margin-bottom: 10px;"><p>Parties must stipulate and sign a proposed consent order.</p></div> <ul style="list-style-type: none">• Parties can stipulate to end the agreement.
--	---

	<p>COURT APPROVAL</p> <ul style="list-style-type: none">⦿ Court shall approve the use of an EJT⦿ Court can deny use of EJT upon a finding of good cause⦿ Court shall approve the use of any high/low agreements or other stipulations if either of the following exist:<ul style="list-style-type: none">• A self represented litigant• A minor, incompetent or conservatee
--	---

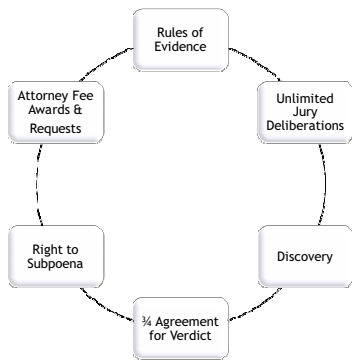
COMPONENTS OF THE CONSENT ORDER

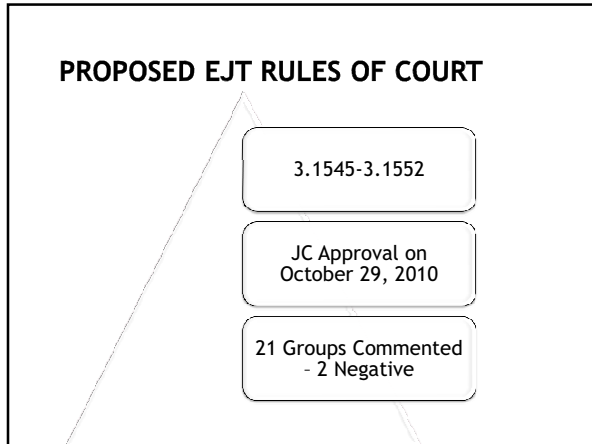
- Prelim Statement that each named party, insurance carrier, counsel informed of rules and procedures
- Judicial Council Approved Info Sheet Read, Understood, and Agreed
- Parties waive all rights to appeal and to move for directed verdict or make post-trial motions except as EJT rules provide

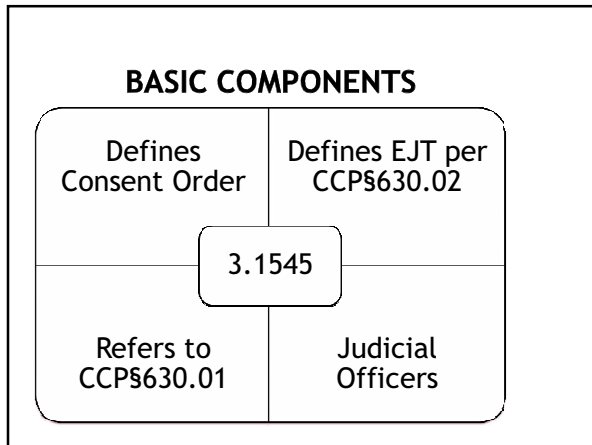
THE PARTIES' AGREEMENT

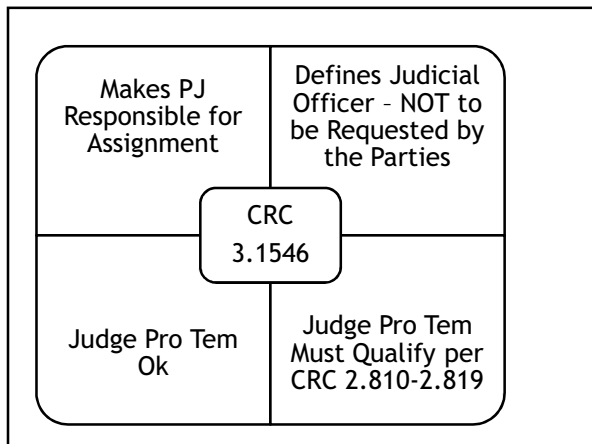


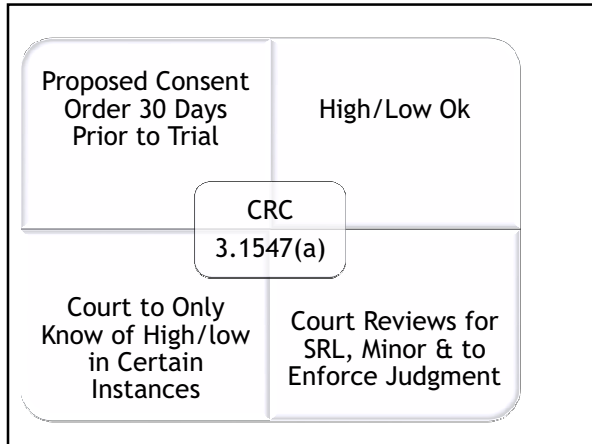
WHAT EJT DOESN'T CHANGE

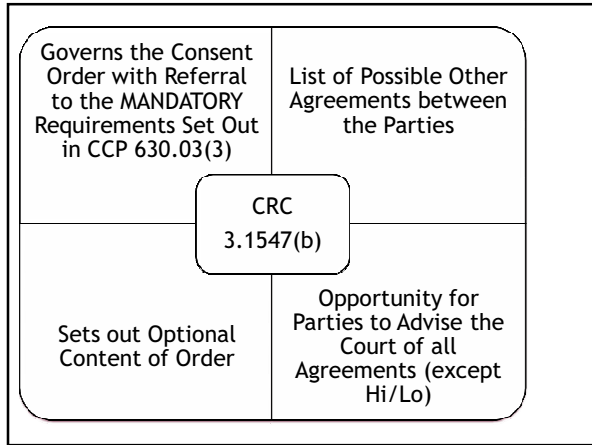


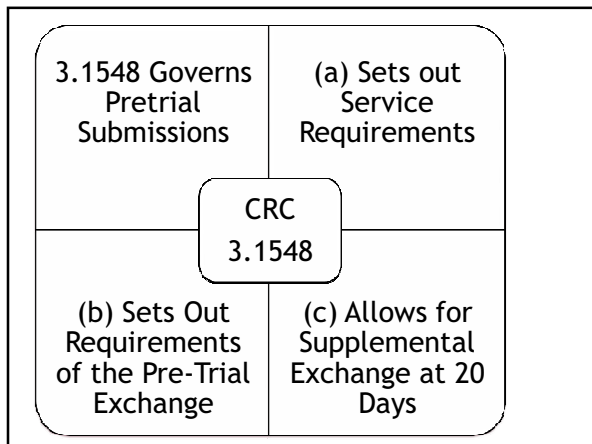


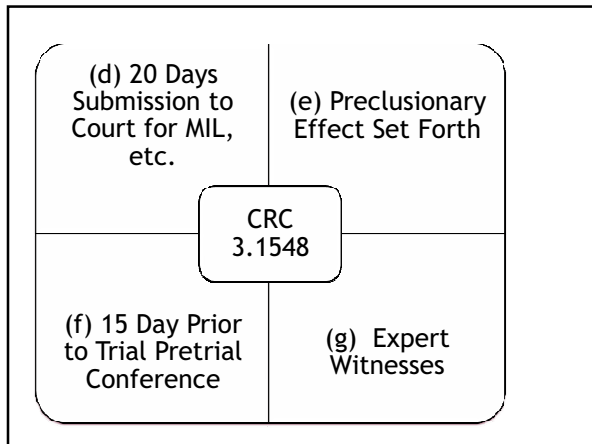


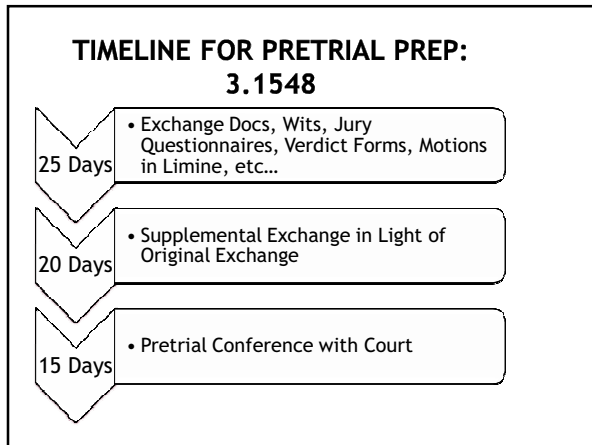


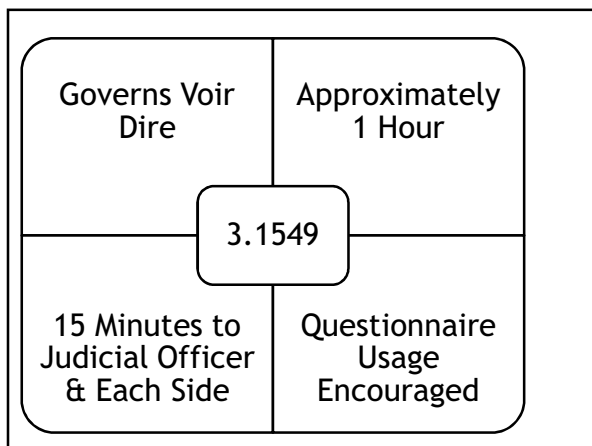


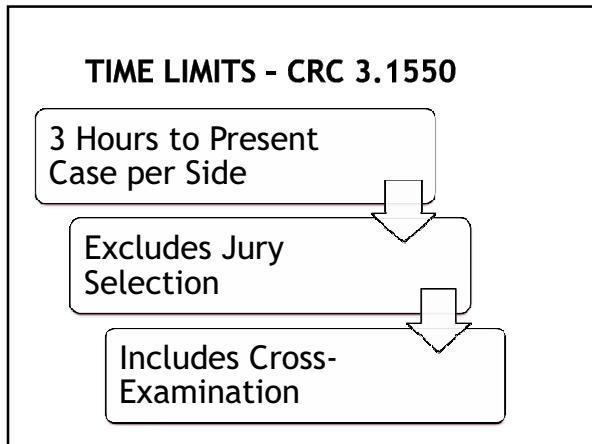






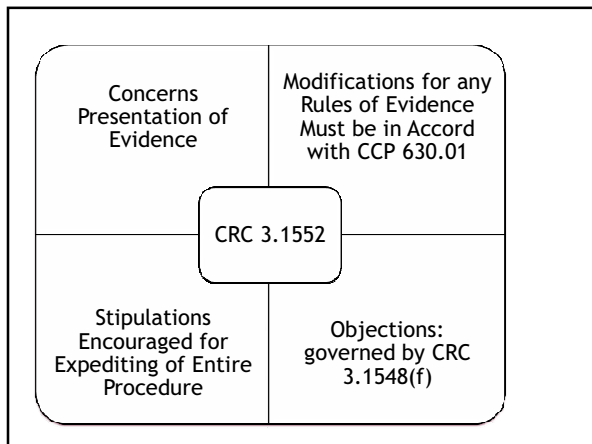







CRC 3.1551: Case Presentation

Use of Summaries and Innovative Methods Urges	Evidence to be Presented 20 Days Prior	Encourages Stipulations to Evidence to Greatest Extent Possible
---	--	---



	<p>SO, HOW WILL ALL THIS WORK?</p>
---	---

<p>A REPORT OF EJT'S THUS FAR...</p>
<ul style="list-style-type: none">◎ Mostly Verdicts for Plaintiffs◎ Mostly Lower than Demand◎ Significant JUROR Satisfaction◎ Significant Judicial Satisfaction

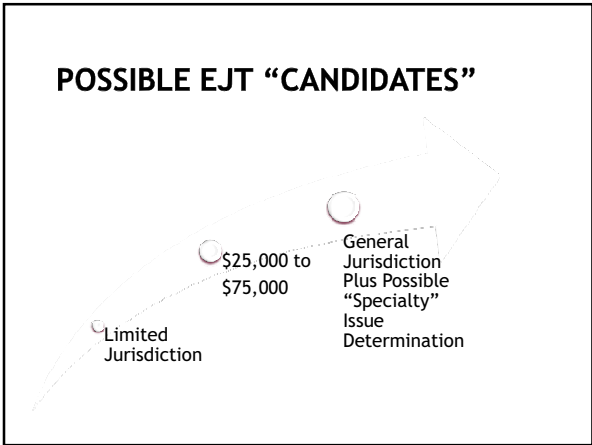
<p>ISSUES AND CONCERNS</p>
<ul style="list-style-type: none">◎ Impact of 998 Offers◎ Medical Set-Offs◎ Determination of Prevailing Party for Fees and Costs

TIPS
Stipulations

Animations

Bifurcations

Issue-fications



STOP AND SMELL THE ROSES?

- Petunia is driving to work, minding her own business.
- Daffodil is also driving to work, behind Petunia, but looking at the flowers, not the road ahead of her.
- Daffodil rear ends Petunia, going about 5 miles per hour, just as Petunia has rolled up to a stop sign.
- Petunia has soft tissue injuries: specials are \$4500 to a Chiropractor and \$1500 in lost earnings.

◎ Petunia’s attorney has submitted the doctor’s declaration per limited jurisdiction “economic litigation” rules.

 IS THIS MATTER A CANDIDATE FOR EJT? IF SO, HOW AND IN WHAT FASHION CAN EJT BE DEPLOYED?

MOTOR VEHICLE MISHAP

Paula was driving to work one morning, listening to classical music and feeling quite calm and centered. She stopped and then entered a 4 way stop sign controlled intersection and was struck by Dan, driving his car in the middle of the intersection. Both claim they had the right of way.

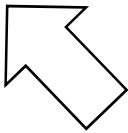
 Paula suffered a broken leg.
 Dan was not injured.

Paula had the following specials:
 Medicals: \$18,000
 Property: 6,000
 Lost Earnings: 9,000
 Demand: \$150,000 <<<

Paula’s medicals involved open reduction surgery, two day hospital stay and some physical therapy. She missed two weeks of work and some time later for her physical therapy appointments.
 Dan only had property damage of \$6200.

- ◉ The medicals are not in dispute, but liability is, as there exists an independent witness who, while not favorable to either side, has his defense expert opining liability for Dan, or at least, comparable negligence for Paula.
- ◉ The parties have deposed the independent witness, videotaping it.
- ◉ Both parties have accident reconstruction experts.

◉ How -- and in what fashion -- could this case be submitted to a jury through the EJT process?




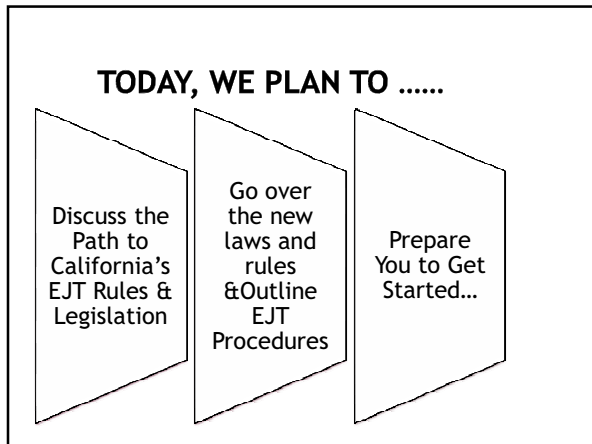
A SEARCH FOR BEAUTY, THEN TRUTH

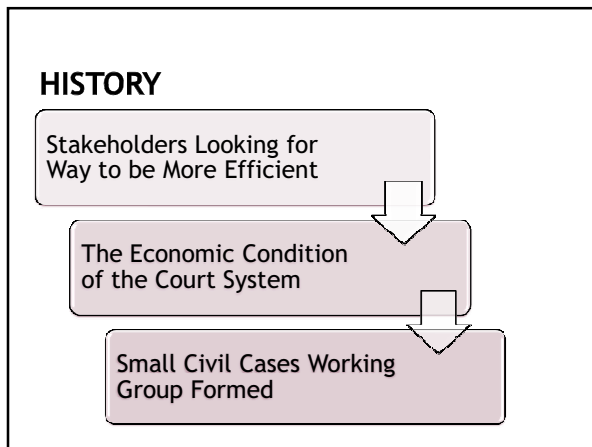
- ◉ Jenny Rivera went to Dr. Welby, a board certified dermatologist, for a wrinkle-reduction facial chemical peel.
- ◉ The chemical mixture used by Dr. Welby was 'off' and Ms. Rivera endured 1st and 2nd degree burns on her forehead and cheeks.
- ◉ She has residual scarring, coverable by make-up for the most part, but her skin's permanent color has darkened.
- ◉ She is 48 years old.

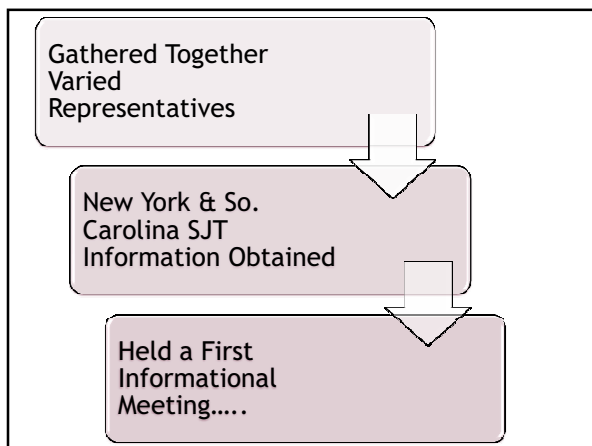
- Through extensive and expensive discovery, the drug company surfaced as the sole tortfeasor, having to admit that their ratios in the formula were inputted incorrectly creating an imbalance in the acidity of the formula of the batch used on Jenny.
- The sole issue is the degree and depth of her mental suffering and impact of life-long darkened skin.

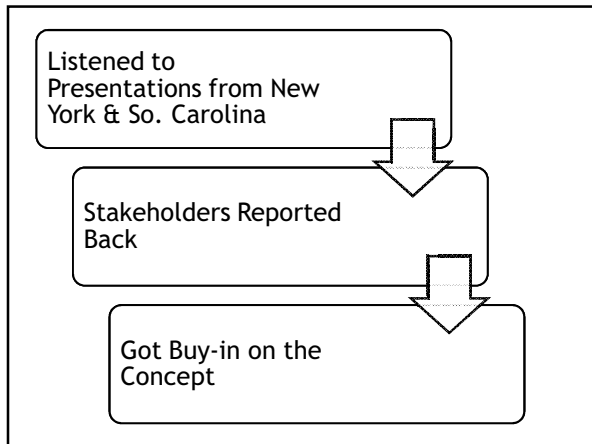
- The anticipated witnesses are Jenny, her psychiatrist, and the defense doctor, in addition to one or two of Jenny's closest friends who will testify to her mental anguish and embarrassment.
- What would be the pros and cons of an EJT?

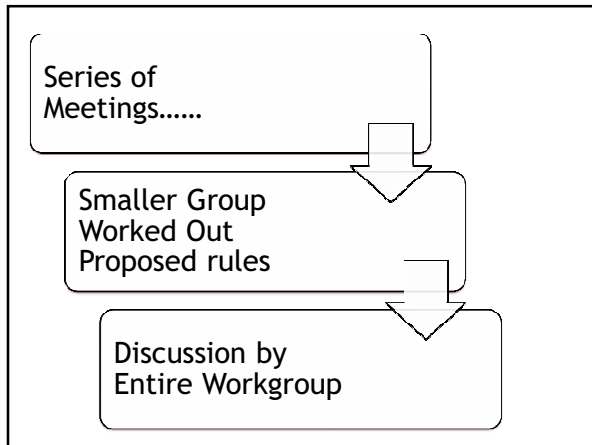
	<p>THE NEW EXPEDITED JURY TRIALS: 2011 AND BEYOND</p>
	<p>Judge Mary Thornton House Los Angeles Superior Court</p>

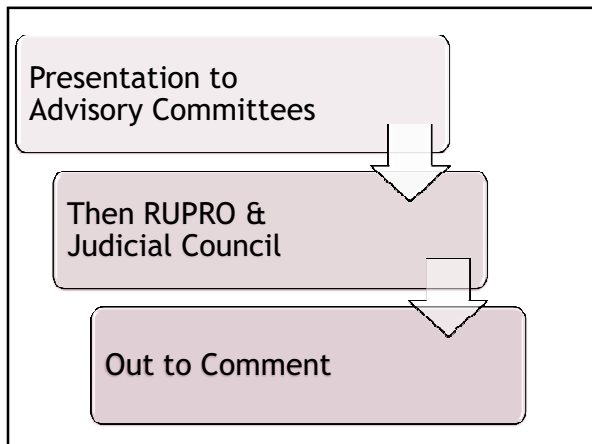


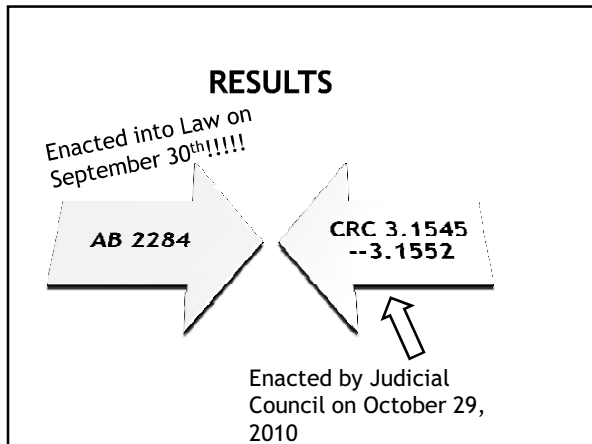


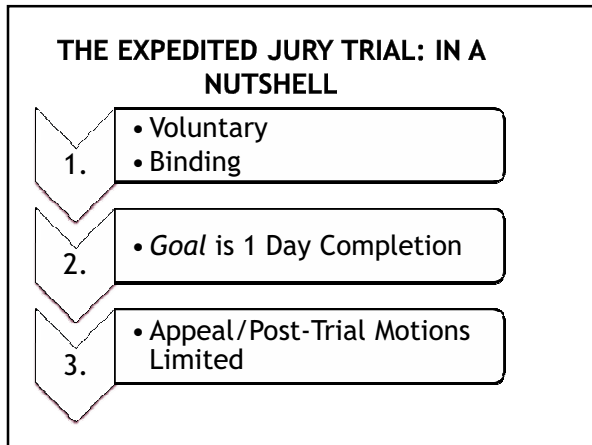


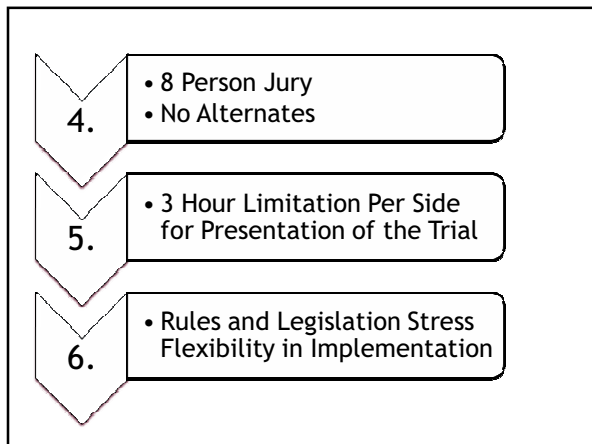


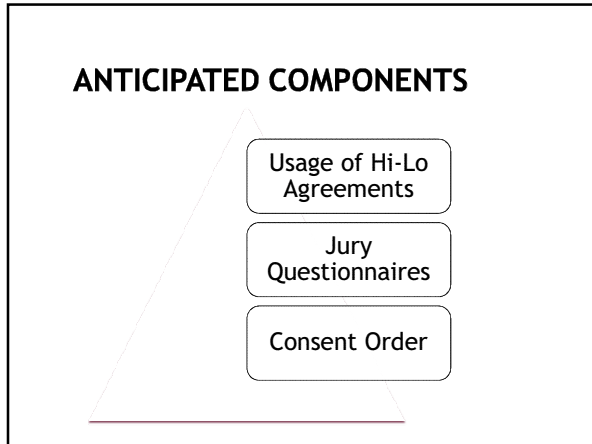


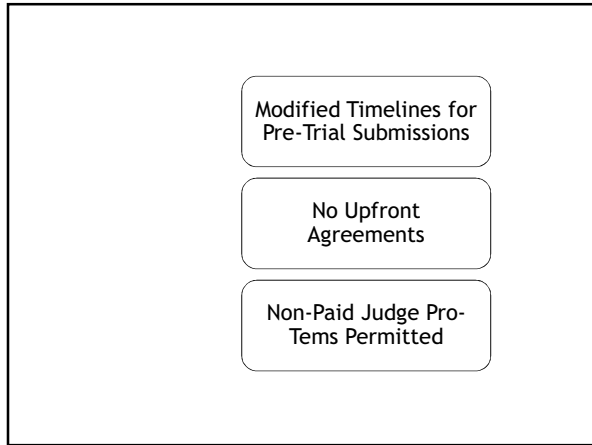













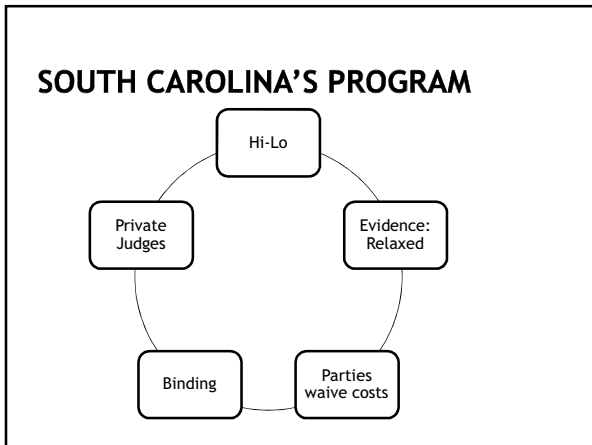
GROUNDS TO VOID

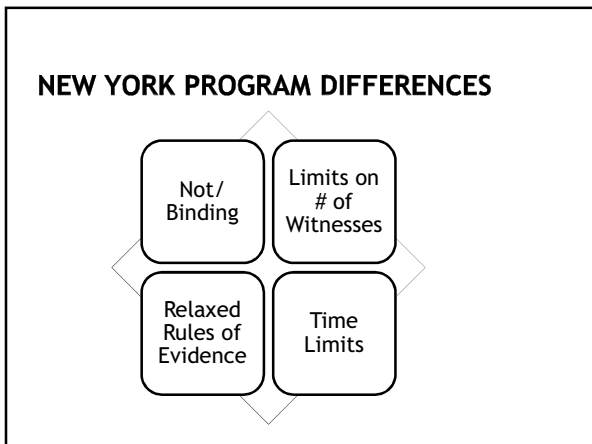
Only Permitted When:

Judge Misconduct Materially Affects Substantial Rights	Jury Misconduct	Corruption, Fraud, Undue Means
--	-----------------	--------------------------------



WHAT WE LEARNED FROM NEW YORK & SOUTH CAROLINA



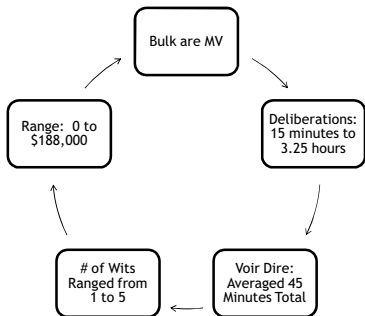


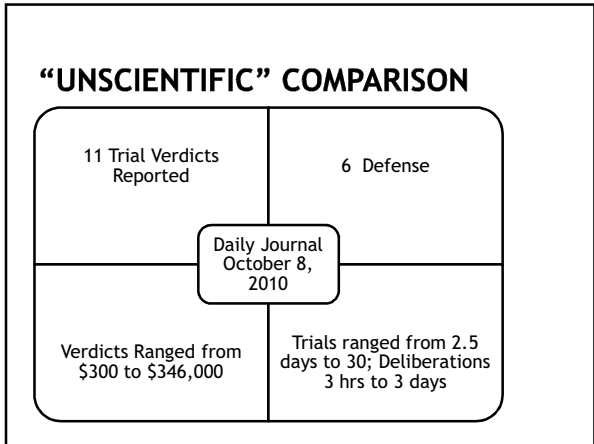
NEW YORK PROGRAM NUMBERS

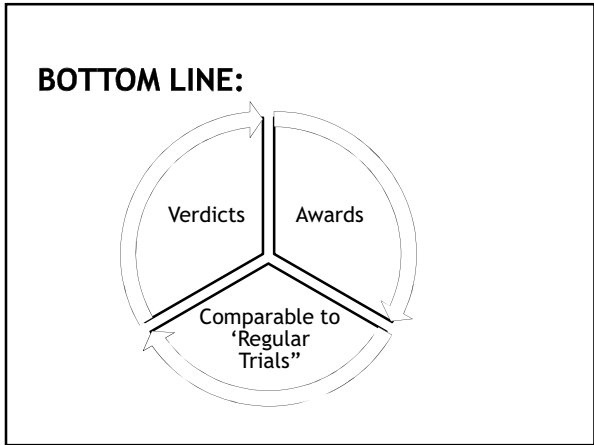
Statistics-9/06 to 12/06	Statistics-1/07 to 2/07
26 Cases	16 Cases
6 □/20 ▲	8 □/8 ▲
Average Verdict: \$80,443	Average Verdict: \$54,750

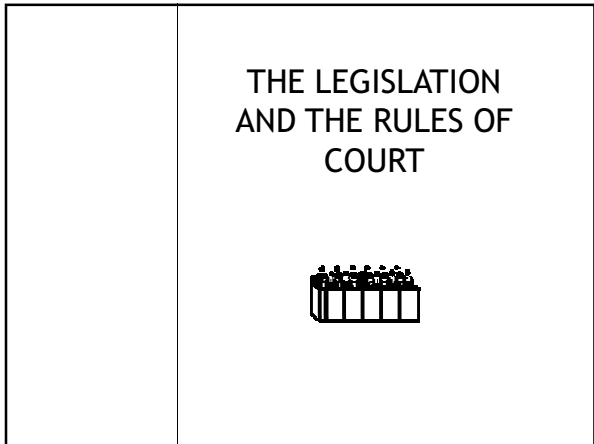
Statistics: 3/07 to 4/07	Statistics: 5/07-6/07
13 Cases	15 Cases
8 □/5 ▲	7 □/8 ▲
Average Verdict: \$51,077	Average Verdict: \$151,041

FACTOIDS ABOUT THESE 70 CASES









THE LEGISLATION—CCP §630.03

EJT: consensual, binding jury trial before a reduced jury panel & judge

- All civil rules apply except for changes set forth in the legislation

Parties must stipulate and sign a proposed consent order.

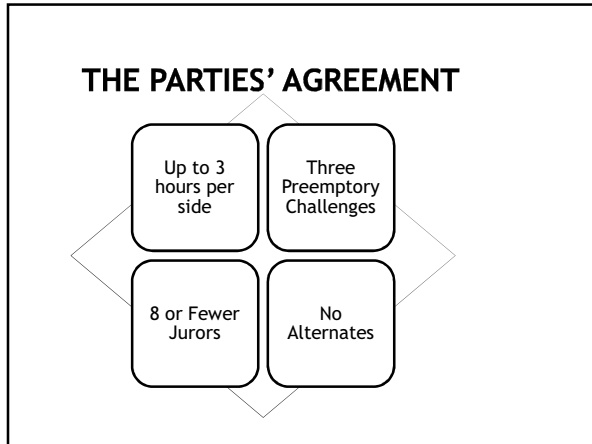
- Parties can stipulate to end the agreement.

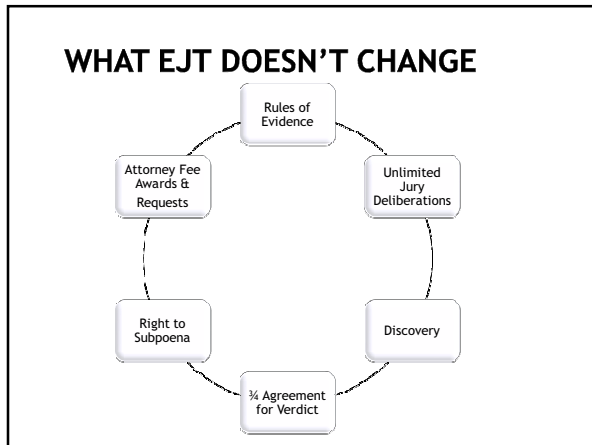
COURT APPROVAL

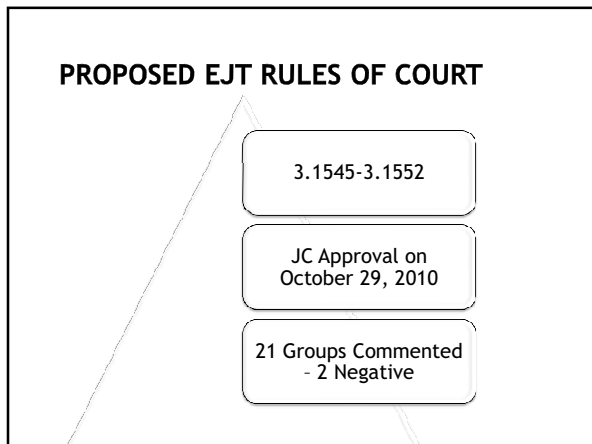
- ◉ Court shall approve the use of an EJT
- ◉ Court can deny use of EJT upon a finding of good cause
- ◉ Court shall approve the use of any high/low agreements or other stipulations if either of the following exist:
 - A self represented litigant
 - A minor, incompetent or conservatee

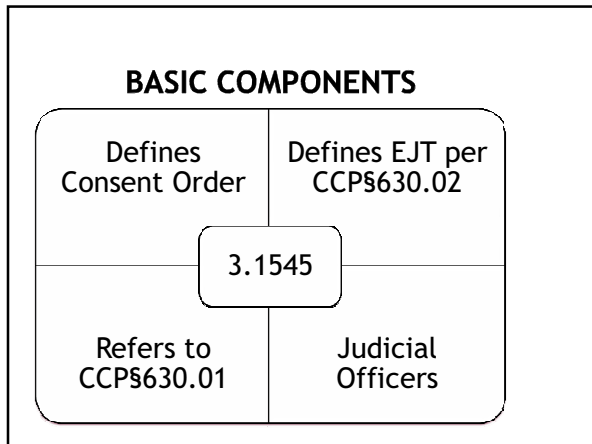
COMPONENTS OF THE CONSENT ORDER

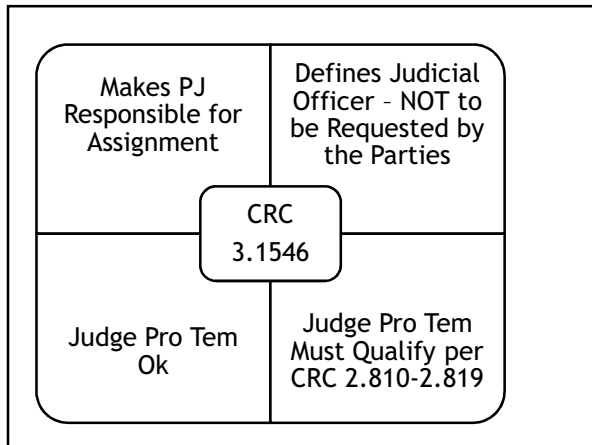
- ◉ Prelim Statement that each named party, insurance carrier, counsel informed of rules and procedures
- ◉ Judicial Council Approved Info Sheet Read, Understood, and Agreed
- ◉ Parties waive all rights to appeal and to move for directed verdict or make post-trial motions except as EJT rules provide

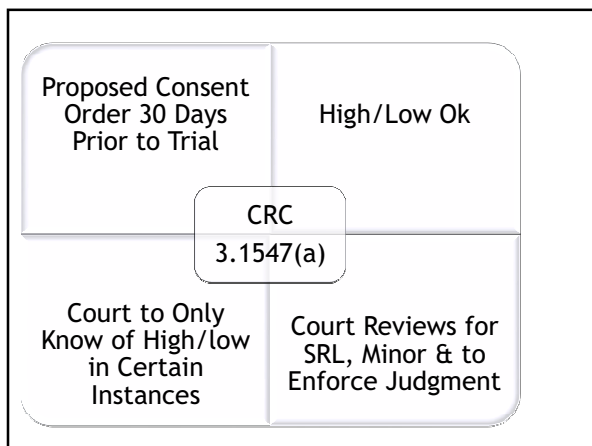


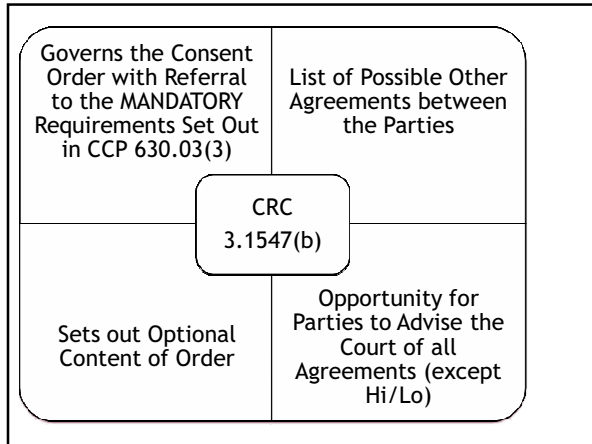


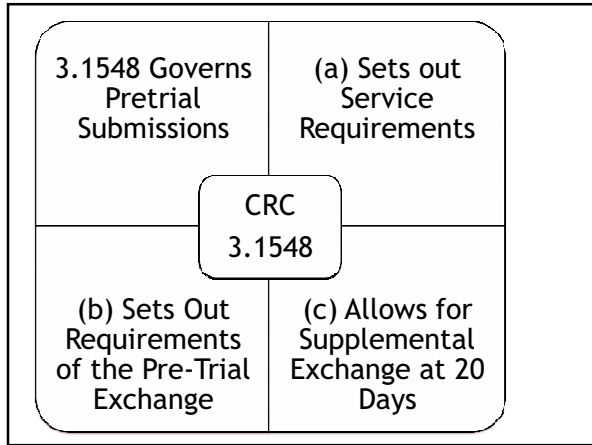


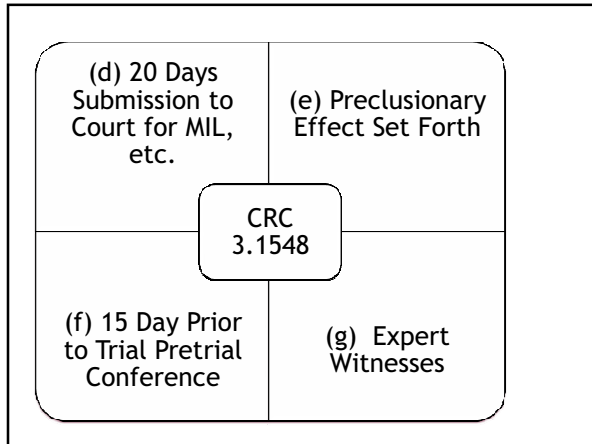


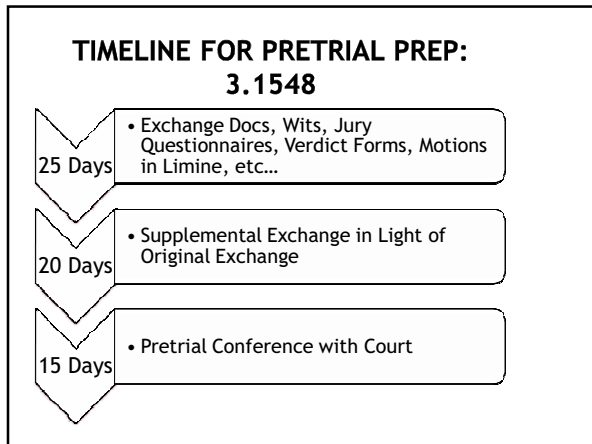


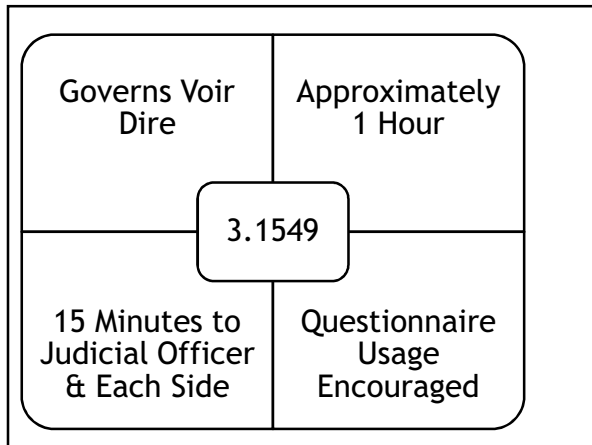


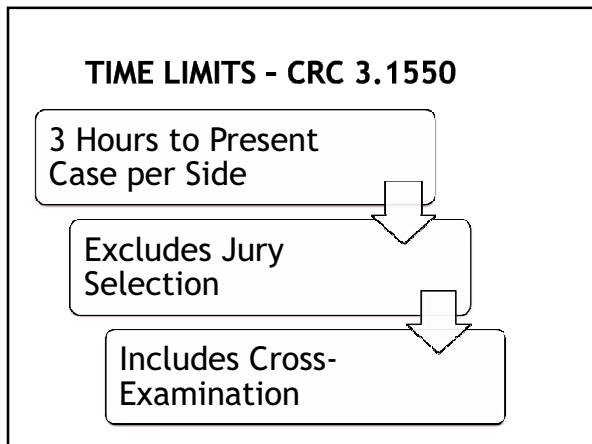











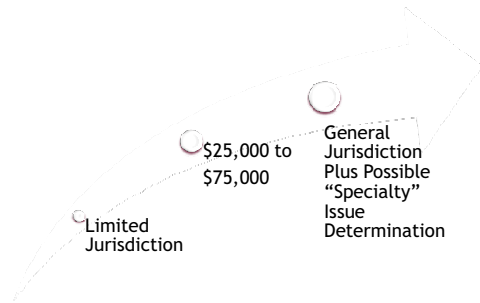


CRC 3.1551: Case Presentation		
Use of Summaries and Innovative Methods Urges	Evidence to be Presented 20 Days Prior	Encourages Stipulations to Evidence to Greatest Extent Possible

Concerns Presentation of Evidence	Modifications for any Rules of Evidence Must be in Accord with CCP 630.01
CRC 3.1552	
Stipulations Encouraged for Expediting of Entire Procedure	Objections: governed by CRC 3.1548(f)

	SO, HOW WILL ALL THIS WORK?
---	------------------------------------

POSSIBLE EJT "CANDIDATES"



STOP AND SMELL THE ROSES?

- ⦿ Petunia is driving to work, minding her own business.
- ⦿ Daffodil is also driving to work, behind Petunia, but looking at the flowers, not the road ahead of her.
- ⦿ Daffodil rear ends Petunia, going about 5 miles per hour, just as Petunia has rolled up to a stop sign.
- ⦿ Petunia has soft tissue injuries: specials are \$4500 to a Chiropractor and \$1500 in lost earnings.

- ⦿ Petunia's attorney has submitted the doctor's declaration per limited jurisdiction "economic litigation" rules.

IS THIS MATTER A CANDIDATE FOR EJT? IF SO, HOW AND IN WHAT FASHION CAN EJT BE DEPLOYED?

MOTOR VEHICLE MISHAP

Paula was driving to work one morning, listening to classical music and feeling quite calm and centered. She stopped and then entered a 4 way stop sign controlled intersection and was struck by Dan, driving his car in the middle of the intersection. Both claim they had the right of way.

Paula suffered a broken leg.
Dan was not injured.

Paula had the following specials:

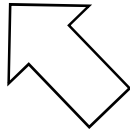
Medicals: \$18,000
Property: 6,000
Lost Earnings: 9,000
Demand: \$150,000 <<

Paula's medicals involved open reduction surgery, two day hospital stay and some physical therapy. She missed two weeks of work and some time later for her physical therapy appointments.

Dan only had property damage of \$6200.

- The medicals are not in dispute, but liability is, as there exists an independent witness who, while not favorable to either side, has his defense expert opining liability for Dan, or at least, comparable negligence for Paula.
- The parties have deposed the independent witness, videotaping it.
- Both parties have accident reconstruction experts.

How -- and in what fashion -- could this case be submitted to a jury through the EJT process?



Seven horizontal lines for writing.

A SEARCH FOR BEAUTY, THEN TRUTH

- Jenny Rivera went to Dr. Welby, a board certified dermatologist, for a wrinkle-reduction facial chemical peel.
- The chemical mixture used by Dr. Welby was 'off' and Ms. Rivera endured 1st and 2nd degree burns on her forehead and cheeks.
- She has residual scarring, coverable by make-up for the most part, but her skin's permanent color has darkened.
- She is 48 years old.

Seven horizontal lines for writing.

- Through extensive and expensive discovery, the drug company surfaced as the sole tortfeasor, having to admit that their ratios in the formula were inputted incorrectly creating an imbalance in the acidity of the formula of the batch used on Jenny.
- The sole issue is the degree and depth of her mental suffering and impact of life-long darkened skin.

Seven horizontal lines for writing.

◎ The anticipated witnesses are Jenny, her psychiatrist, and the defense doctor, in addition to one or two of Jenny's closest friends who will testify to her mental anguish and embarrassment.

◎ What would be the pros and cons of an EJT?

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): _____ : TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY <p style="text-align: center;">DRAFT Not approved by Judicial Council</p> <p style="text-align: center;">v. 8 03.14.11</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<p style="text-align: center;">[PROPOSED] CONSENT ORDER FOR EXPEDITED JURY TRIAL</p>	CASE NUMBER:
	This consent form is to be signed by all parties and their attorneys of record in an Expedited Jury Trial proceeding as defined by California Code of Civil Procedure sections 630.01-630.12 and California Rules of Court 3.1545-3.1552. Before completing this form, all parties should review <i>Expedited Jury Trial Information Sheet</i> (form EJT-010-INFO).

EACH PARTY AGREES AS FOLLOWS:

1. The parties to the action, each of whom has the authority to consent to an expedited jury trial (EJT), are:
 - a. Plaintiff (*name*):
 - b. Defendant (*name*):
 - c. Other party (*name and party*):

2.
 - a. Plaintiff is represented by an attorney who has advised plaintiff about the EJT procedures and provided plaintiff with an *Expedited Jury Trial Information Sheet* (form EJT-010-INFO).
 - b. Defendant is represented by an attorney who has advised defendant about the EJT procedures and provided defendant with an *Expedited Jury Trial Information Sheet* (form EJT-010-INFO).
 - c. I (*name*): _____ am representing myself and understand the Expedited Jury Trial procedures as set forth in the Code of Civil Procedure, sections 630.01-630.12, and California Rules of Court 3.1545-3.1552.
 - d. Insurance carriers responsible for providing coverage or defense for the following parties have been informed of the EJT procedures and provided with an *Expedited Jury Trial Information Sheet* (form EJT-010), and do not object to the procedure:
 - i. Insurance carrier (*name of carrier*): _____
for (*name of party*): _____
 - ii. Insurance carrier (*name of carrier*): _____
for (*name of party*): _____
 - iii. Additional insurance carriers and parties are listed on attached form MC-025.

3. Each party understands and agrees to the EJT procedures, as follows:
 - a. that all parties **waive all rights to appeal** and to move for directed verdict or make any posttrial motions, except as provided in sections 630.08 and 630.09;
 - b. that each side shall have up to **three hours** in which to present its case;
 - c. that the jury shall be composed of **eight or fewer jurors** with no alternates;
 - d. that each side shall be **limited to three peremptory challenges**, unless the court permits an additional challenge in cases with more than two sides as provided in Section 630.04; and
 - e. that the trial and pretrial matters will proceed under (a)-(d) above and, unless the parties expressly agree otherwise in this agreement or the attachment to it, under all other provisions of the Expedited Jury Trial Act (Code Civ. Proc., § § 630.01 and following) and the rules of court for expedited jury trials (Cal. Rules of Court, rules 3.1545-3.1552).

PLAINTIFF/PETITIONER: _____	CASE NUMBER: _____
DEFENDANT/RESPONDENT: _____	

4. Each party understands that only three-quarters of the jury need to agree in order to reach a decision, unless otherwise agreed by the parties.
5. Each party understands that the parties may make additional agreements concerning the trial in terms of applicable rules, number of witnesses, types of evidence, or other matters in order to shorten the length of time in which the matter will be tried to the jury. Any such agreement must be described in item 8 below or in *Attachment to [Proposed] Consent Order for Expedited Jury Trial* (form EJT-020A).
6. Each party understands that the parties may enter a confidential high-low agreement specifying a minimum amount of damages that a plaintiff is guaranteed to receive from defendant and a maximum amount that defendant will be liable for, regardless of the verdict returned by the jury.
7. Each party understands that any award of attorney's fees and costs will be decided by the court.
8. Other agreements are described in attached form EJT-020A. are as follows:

9. Total number of pages attached is _____. The consents below apply to all the agreements described in those pages.

After reading the above and any attachments, I hereby consent to the expedited jury trial procedures for this case as stated in these documents.

PARTIES

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ _____
(SIGNATURE OF PLAINTIFF)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ _____
(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME AND TITLE, IF ANY)

▶ _____
(SIGNATURE OF (describe party)):

ATTORNEYS

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY FOR DEFENDANT)

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY FOR (describe party)):

It is so ORDERED.

Date: _____
Judicial Officer

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**ATTACHMENT TO
[PROPOSED] CONSENT ORDER FOR EXPEDITED JURY TRIAL**

(This attachment may be used with form EJT-020.)

As part of the *[Proposed] Consent Order for Expedited Jury Trial*, the parties have agreed to the following (*check all items on which agreements have been reached and describe in detail. If more space is needed for any item, attach form MC-025, Attachment to Judicial Council Form and complete item 15 below*):

1. Modifications of the timelines for pretrial submissions required by rule 3.1548 (*describe timeline*):

2. Limitations on the number of witnesses per party, including expert witnesses (*describe*):

3. Modifications of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony by such witnesses (*describe*):

4. Allocation of time periods stated in Rule of Court 3.1550, including how arguments and cross-examination may be used by each party in the three-hour time frame (*describe*):

5. Any evidentiary matters agreed to by the parties, including any stipulations or admissions regarding factual matters (*state such matters in detail*):

6. Any agreements about what constitutes necessary or relevant evidence for a particular factual determination (*describe*):

PLAINTIFF/PETITIONER: _____	CASE NUMBER:
DEFENDANT/RESPONDENT:	

7. Agreements about admissibility of particular exhibits or demonstrative evidence that are presented without the legally required authentication or foundation (*describe*):
8. Agreements about admissibility of video or written depositions and declarations (*describe*):
9. Agreements about any other evidentiary issues or the application of any of the rules of evidence (*describe*):
10. Agreements to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury (*describe*):
11. Agreements concerning the time frame for filing and serving motions in limine (*describe*):
12. Agreements concerning the number of jurors to hear this case (*describe*):
13. Agreements concerning the number of jurors required for to reach a verdict in this case (*describe, including any agreements regarding loss of juror after trial starts*):
14. Other agreements (*describe*):
15. Form MC-025 is attached, with further details concerning items (*list items*):