

dures, courts may conduct quicker, less expensive jury trials lasting no more than a day, thus effecting great savings in certain less complex cases.

The basic provisions for an expedited jury trial are straightforward. All parties must waive their rights to appeal. Each side has three hours to put on all its witnesses, show the jury its evidence, and argue its case. Eight jurors will be chosen to decide the case, with each side allowed three peremptory challenges. Reaching a verdict requires six jurors. The jury may decide that one or more defendants will pay money to the plaintiff, or the plaintiff is not entitled to an award. The court will enter a judgment based on the verdict. In addition, the parties are allowed to agree before trial that a defendant will pay a certain amount to the plaintiff even if the jury decides that a lower payment, or no payment at all, is due. Alternatively, the parties may cap an amount to be paid to the plaintiff even if the jury returns a higher amount. (See Steven P. Goldberg, "Expedited Jury Trials Offer Quick Trial Experience," at 52.)

Civility Pays Dividends

The greater difficulty in scheduling court hearings and trials under the new budget constraints is no excuse for attorneys to lower their standards for acting professionally with one another. The duty to act ethically with opposing counsel does not diminish because the court system is congested. New strains on attorneys and their clients require heightened cooperation among counsel to ensure that litigation is accomplished in a responsible manner. Experience indicates that open lines of communication yield better results.

Most importantly, judges expect counsel to truly behave as officers of the court. Judicial officers are not interested in petty bickering or nonessential differences between attorneys or their clients. Those who use quarrelsome or stonewalling tactics to secure advantages should remember that judges are extremely mindful of the adage "It all catches up with you, sooner or later."

Times are tough. No one ever said that the practice of law would be easy. However, applying some of these suggestions can make litigating a little more efficient, economical, and profitable. ❖

Expedited Jury Trials Offer Quick Trial Experience

The California Legislature and the Judicial Council have approved a new jury trial scheme that went into effect this year.¹

There will be a bright future for this new method of adjudication when the potential players figure out that an expedited jury trial (EJT) is good for clients, lawyers, and the courts—not to mention the jury pool. And new lawyers will find that EJTs provide real trial lawyer experience.

California borrowed the idea for EJTs from a program that began in Charleston, South Carolina, called Summary Jury Trials. Charleston implemented a system for trying civil cases before six-member juries in a single day. After a time, contingent fee lawyers and business interests in Charleston realized how cost-effective the program was, and they decided to use it whenever possible. Charleston lawyers and the litigants (especially insurance carriers) became so enamored with the new program that it soon was adopted across South Carolina.

By choosing an EJT, parties largely give up the right to an appeal.² There are only limited circumstances, such as fraud or jury or judicial misconduct, under which an appeal will be allowed.³ In return, parties get an inexpensive trial in about one full court day.⁴ As with any matter, an attorney and client should carefully consider what type of proceeding will best serve the client's goals. Mediation or arbitration may be better for a particular matter, or perhaps a traditional jury trial if preserving rights is a concern. But in many cases, clients will be pleased to accept the risks of an EJT in return for its speed and finality.

Additional Rules

An EJT may not be required in advance by any contract,⁵ but parties may stipulate to an EJT⁶ no later than 30 days before the date that is

set for trial.⁷ Without good cause, the court must permit an EJT if one is requested by the parties.⁸ To accomplish a civil jury trial in one day, there will be advanced exchanges and evidentiary rulings before trial, so parties must be cognizant of the EJT's pretrial deadlines, which are different from those of a traditional jury trial.

Twenty-five days before the EJT, the parties must exchange evidence to be introduced at trial, witness lists, proposed jury instructions, proposed jury questionnaires, proposed special verdict forms, motions in limine, and any technical glossary.⁹ Twenty days before the EJT, a supplemental evidentiary exchange takes place.¹⁰ Any documents or evidence first discovered at an expert's deposition is automatically deemed exchanged for purposes of this supplemental exchange.¹¹ Fifteen days before the EJT, the judge conducts a pretrial conference and rules on evidentiary issues and motions in limine.¹² Deadlines for posttrial motions are unaffected.

An EJT is designed to be inexpensive and completed in one full court day.¹³ The rules contemplate flexibility of judicial officers and counsel¹⁴ and allow for innovative ways to present evidence to a jury.¹⁵ EJTs are perfect for a new attorney, and they can be held in limited or unlimited jurisdictions.

EJT rules generally provide that there will be eight jurors chosen after about a 45-minute voir dire, with three peremptory challenges per side (unless fewer jurors are agreed upon by the litigants).¹⁶ The judge and each side receive 15 minutes to inquire of the jury panel.¹⁷ Six of the eight jurors are needed to render a verdict, the same proportion required in a traditional civil jury trial.¹⁸ Each side has three hours to present its case, with cross-examination time charged to the examiner's three hours. Time can be allocated unevenly if the parties agree.¹⁹

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¹ See CODE CIV. PROC. §§630.01-630.12 and CAL. R. CT. 3.1545-1552.

Counsel may make confidential high-low agreements; in South Carolina, they are a hallmark of the program.²⁰ Parties to a suit enter these agreements, which specify a minimum amount of damages guaranteed to the plaintiff and the maximum damages that a defendant will be liable for, regardless of the jury's verdict. Usually insurance policy limits serve as the high. Court reporters are not needed under EJT rules, since the parties waive the right to appeal.²¹ If you want a court reporter, you pay for one.

There are a host of suggestions within the EJT rules for additional stipulations between counsel. These are calculated to help the parties complete the EJT within the time allotted. Some notable suggested stipulations concern modifications of time lines, limits to the number of witnesses, evidentiary matters, exhibits, and video depositions.²²

Most likely, the EJT process will primarily be used by parties when there are small damages, the issues are limited, or the parties just want a jury to decide the issue. But even if the jury award has the potential to be very large, parties may still opt for a cost-effective EJT.

EJTs will serve as a way for lawyers to gain trial experience, especially younger and less experienced counsel. Further, since lawyers must actually work together on the stipulations required for an EJT, the process should foster civility between counsel. EJTs allow the courts to move cases through the system faster and with much less expense. Thus, judges will be able to increase efficiency and accomplish more. Finally, jurors should be pleased to know that—except for their unlimited deliberation time—the whole trial should take just a single day. ❖

¹ CODE CIV. PROC. §§630.11—630.12.

² CODE CIV. PROC. §630.09(a).

³ *Id.*

⁴ CAL. R. CT. 3.1550.

⁵ CODE CIV. PROC. §630.03(c).

⁶ *Id.*

⁷ CAL. R. CT. 3.1547(a)(1); *see also* CODE CIV. PROC. §630.03(a).

⁸ CODE CIV. PROC. §630.03(d).

⁹ CAL. R. CT. 3.1548(b).

¹⁰ *Id.*

¹¹ CAL. R. CT. 3.1548(f).

¹² CAL. R. CT. 3.1548(g).

¹³ CAL. R. CT. 3.1550.

¹⁴ *See generally* CODE CIV. PROC. §630.03.

¹⁵ CAL. R. CT. 3.1551.

¹⁶ CODE CIV. PROC. §630.04; CAL. R. CT. 3.1549.

¹⁷ CAL. R. CT. 3.1549.

¹⁸ CODE CIV. PROC. §630.07(b).

¹⁹ CAL. R. CT. 3.1547(b)(4).

²⁰ CODE CIV. PROC. §630.09(d).

²¹ *See* CODE CIV. PROC. §630.09(a).

²² CAL. R. CT. 3.1547(b); *see also* CAL. R. CT. 3.1550.

The Rewards and Pitfalls of Class Actions



All you need is 40 people to level the playing field against corporate America. If this sounds too good to be true, you are probably right. Having enough people to form a class merely establishes one of the four mandatory prerequisites for class certification. A class proponent must also demonstrate commonality, typicality, and adequacy.¹

Popular culture suggests a distinct image of class action litigation. In addition to legal technicalities, the predominating perceptions are of big players and big settlements. Nevertheless, despite its reputation, class action litigation is replete with risk for plaintiffs. While small individual claims can be transformed into a supersized class action lawsuit, substantial expense and difficulty can await inexperienced counsel. For those who are about to undertake their first class action litigation, here is a road map for success.

IF THIS IS YOUR FIRST TIME AT THE DANCE, BRING A DATE. Traditionally, society runs on the concept of “first come, first

served.” In the legal community, this is known as the first-to-file rule. The more appropriate slogan for a class action filing is “approach with caution.” This is because the first lawyer to file suit will not automatically attain lead counsel status. Rather, the mere sign of class activity will easily fuel a lawyer lineup, in which many await the opportunity to expand on your ideas and potentially nullify your efforts as lead counsel.

When the courts designate lead counsel, they are looking for someone with dedication, knowledge, and—more importantly—staying power. If you are working in a small office, have few resources, and have little experience in class actions, it is always best to find a partner and associate with a firm that has the necessary resources and experience to prosecute complex litigation.

EVERY TEAM NEEDS A STRONG CAPTAIN. Behind every class representative stands a large group of people, who will learn that the class is only as good as its representative. As

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