

**Invitation to Comment**

Title	Civil Trials: Expedited Jury Trials (adopt Cal. Rules of Court, rules 3.1545–3.1557 and adopt <i>Expedited Jury Trials Information Sheet</i> (form EJT-010-INFO))
Summary	This proposal establishes a new expedited jury trial process as an alternative, streamlined method for handling civil actions to promote the speedy and economic resolution of cases and conserve judicial resources. An expedited jury trial is heard by a smaller jury, with the goal of completing the trial in one day. Participation in an expedited jury trial is voluntary, and the decision of the jury is binding on the parties. Appeals and post-trial motions are strictly limited. 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. The administration of expedited jury trial programs, including scheduling of proceedings would be left to each superior court.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
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**Background**

The rising costs of litigation present an ongoing challenge in providing access to justice for a number of litigants, especially those with claims involving relatively small monetary amounts. For many of these litigants, traditional forms of alternative dispute resolution have not resulted in resolving their cases before trial. Traditional trials can be time consuming and expensive for both litigants and the courts.

An expedited jury trial program would provide an innovative method of enhancing access to the courts by significantly reducing the costs of trials. Parties would be encouraged to enter into agreements that streamline the method of presenting evidence and other matters so that cases generally would be concluded within one trial day. Smaller juries and limitations on appeals would also yield significant savings and help courts conserve judicial resources. Participation would be entirely voluntary, and there would be no monetary restrictions on the cases that could be tried under this process.

Although not required, the ability of parties to enter into high/low agreements in expedited jury trial cases is a key feature of the model that works to the advantage of all parties. Use of such agreements ensures that the plaintiff will achieve some recovery, while at the same time

capping the amount of damages that may be awarded against defendants, making their exposure more certain.

The expedited jury trial model helps ensure that plaintiffs will get their day in court and be able to present their case to a jury. The binding and final nature of the jury verdict will also achieve finality and reduce costs to litigants and the courts by foreclosing appeals and post-trial motions in most cases.

### **Proposed Expedited Jury Trial Rules**

For several years, various groups in the legal community have been discussing ways to make the litigation of smaller civil cases more efficient. In light of those discussions and given the current economic circumstances of the state, the Judicial Council formed a Small Civil Cases Working Group consisting of members of the Civil and Small Claims Advisory Committee and members of plaintiff and defense bars, with the assistance of representatives from the insurance industry, business groups, and a consumer organization. Included in the group's charge was consideration of innovative program models, including but not limited to summary jury trial programs, which could be implemented in California to enhance settlements and promote more effective and efficient administration of civil cases. The working group looked at models from other states, including New York and South Carolina, but developed a proposal that would comport with trials under California law and procedure. The proposal includes adding a new set of rules (chapter 4.5 to division 15 of title 3) to the California Rules of Court to establish an expedited jury trial program and adopting a new information sheet to be provided to all parties before they agree to use the program. The key points of the proposal, including some on which the committee is seeking specific comments, are described below.

#### *Applicable rules and procedures*

The procedures and rules in proposed new chapter 4.5 will govern an expedited jury trial unless the parties agree otherwise, as specifically permitted under the rules, and the court agrees with the modifications. (See rule 3.1546(a).) Any matters not expressly addressed either by the expedited jury trial rules or in the consent order for such a trial will be governed by the applicable statutes and rules governing civil actions. (*Ibid.*)

#### *Assignment of judicial officers*

Each superior court will have discretion about how to administer expedited jury trials within that court. The selection and assignment of a judicial officer to conduct an expedited jury trial will be left to each presiding judge to decide, consistent with rule 10.603. (See rule 3.1546(b).) While such appointment would have to be consistent with the rules of court regarding assignment of judicial officers (see rules 10.603, 10.700, and 10.742), the proposed rule is intended to allow each court to have maximum flexibility to decide how to handle expedited jury trials. For example, a court could create a separate department for expedited jury trial cases, have such cases continue with a previously assigned judge, establish separate calendars, or utilize other methods for handling these proceedings. Specific comments are invited on whether the proposed rule is necessary or sufficient to provide needed flexibility to the local courts in the scheduling and administration of expedited jury trial programs.

The proposed rule expressly precludes appointment of a privately compensated temporary judge to conduct an expedited jury trial. Specific comments are also requested on whether the rule should be expanded to permit such appointments if requested by the parties under rules 2.830–2.835.

*Consent of parties*

Participation in an expedited jury trial would be voluntary. The consent of the parties will be indicated by parties and their counsel signing and submitting to the court a proposed consent order granting an expedited jury trial (Consent Order) which would include representations that the clients have been informed of the applicable rules and procedures and given the Judicial Council information sheet form regarding expedited jury trials. (See rules 3.1547(a) and 3.1548(b) and form EJT-010-INFO.)

Specific comments are invited on whether the rules should also require the parties’ insurance carriers, if any, to sign the proposed consent order.

*Binding consent*

An agreement to participate in an expedited jury trial would be binding on the parties absent a later stipulation of all parties or an order of the court that good cause exists for the action not to proceed as an expedited jury trial. (See rule 3.1547(a).) To reinforce the voluntary nature of this trial program, any agreements to engage in expedited jury trials under this chapter may only be entered into after a dispute has arisen and a case has been filed. This rule is intended to prevent any agreements to participate in expedited jury trials from being entered into before a dispute is within the court system. (See rule 3.1547(b).) For an expedited jury trial involving a minor, an incompetent person, or a person for whom a conservator has been appointed, the court would also have to approve the use of an expedited jury trial and any high/low agreements or other stipulations before the trial. (See rule 3.1547(c).)

*High/low agreements*

Parties in an expedited jury trial are permitted but not required to enter into a high/low agreement governing damages. “High/low agreement” is defined in proposed rule 3.1545(3). A high/low agreement is to be kept confidential. It may not be disclosed to the jury at any time (see rule 31552(c)) and may be disclosed to the court only on the agreement of the parties; in cases involving a minor, an incompetent person, or a person for whom a conservator has been appointed; or if necessary for the enforcement of the judgment. (See rule 3.1548(a)(2).)

*Proposed consent orders*

Timing for submission. Parties seeking an expedited jury trial are required to submit a proposed Consent Order to the court no later than 30 days before any assigned trial date unless a court grants leave for a later submission. (See rule 3.1548(a)(1).)

Mandatory content. In addition to the representations concerning the consent of the parties and their insurance carriers, the proposed Consent Order must also include the parties’ agreement that: (1) they generally waive their rights to appeal and to make post-trial motions;

(2) each side has three hours in which to present its case; (3) the jury is to be composed of eight or fewer jurors with no alternates; (4) each side is limited to three peremptory challenges, except as provided; and (5) pretrial and trial matters will proceed under the rules set forth in the chapter unless the parties expressly agree otherwise. (See rule 3.1548(b)(2).)

Optional content. Except for the mandatory elements described above, the parties may agree to modify the rules and procedures that will apply to their particular trial. Any such agreements must be set forth in the proposed Consent Order. These can include agreements about modifications of the timelines for pretrial submissions, limitations on the number of witnesses per party, modification of rules and statutory provisions regarding exchange of expert witness information and presentation of testimony by such witnesses, and any other evidentiary matters agreed to by the parties. (See rule 3.1548(c).)

Court action. The court may deny the proposed Consent Order if it finds good cause why the case should not be handled as an expedited jury trial. (See rule 3.1548(d).)

#### *Pretrial proceedings*

In order to ensure that the case is appropriate and ready to be heard as an expedited jury trial, a pretrial conference will be held 15 days before the trial. The parties are also required to exchange witness lists, exhibits, proposed jury verdict forms and juror questionnaires, and other materials 25 days before the trial. The rules set forth in detail the materials that are to be exchanged (see rule 3.1549(b)), provide for a supplemental exchange (see rule 3.1549(c)), and outline the issues to be addressed at the pretrial conference (see rule 3.1549(f)). Failure to serve the exhibits in advance is grounds for preclusion of the evidence from a party's case in chief at trial unless the party can show good cause for the failure. (See rule 3.1549(e).)

#### *Jury size and selection*

Juries will be composed of eight jurors unless the parties have agreed to fewer, with no alternates. (See rule 3.1550(a).) Each side will be allowed up to three peremptory challenges, with the possibility of one additional challenge being granted to each side in multiple party cases, as is done in traditional civil jury trials under section 231(c) of the Code of Civil Procedure. (See rule 3.1550(b).) Approximately one hour will be devoted to voir dire, with 15 minutes each allowed for the judicial officer and for each side. (See rule 3.1550(c).) Parties are encouraged to submit joint form questionnaires for use by prospective jurors to help expedite the voir dire process.

#### *Case presentation*

The goal is to complete an expedited jury trial in one full trial day or less. Each side will have three hours to present its case, including opening and closing arguments, unless the court finds good cause to allow additional time. The parties are encouraged to streamline the trial process by limiting the number of live witnesses. (See rule 3.1551.) The parties are also encouraged to use innovative methods to present matters to the jurors and to stipulate to factual and evidentiary matters where possible in order to expedite the trial to the greatest extent possible. (See rules 3.1552, 3.1553.)

Traditional rules of evidence apply in expedited jury trials unless the parties stipulate otherwise. (See rule 3.1553(a).) The proposed rules also make clear that any stipulation by the parties to use relaxed rules of evidence may not be construed to eliminate or in any way affect the right of a witness or party to invoke any applicable evidentiary privilege or other law that protects confidentiality. (*Ibid.*)

#### *Jury verdict*

The verdict in an expedited jury trial case is binding, subject to any written high/low agreement or other stipulations between the parties. (See rule 3.1554(a).) A vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise. (See rule 3.1554(b).)

The proposed rules also note that the time limits in an expedited jury trial are in no way intended to preclude a jury from deliberating as long as needed. (See rule 3.1551.)

#### *Post-trial motions and appeals*

Parties are required to waive their rights to appeal except on the grounds of alleged misconduct of the judicial officer that materially affected the substantial rights of a party; misconduct of the jury; or corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party. (See rule 3.1556.) Those are also the only grounds on which a party may seek a new trial. (See rules 3.1555, 3.1556.)

Parties to an expedited jury trial are also required to waive any motions for directed verdicts, motions to set aside the verdict or any judgment rendered by the jury, or motions for a new trial on the basis of inadequate or excessive damages. (See rule 3.1555.)

#### *Costs and attorney's fees*

All statutes and rules governing costs and attorney's fees apply in expedited jury trials unless the parties agree otherwise in the Consent Order. (See rule 3.1557.)

#### ***Expedited Jury Trial Information Sheet (form EJT-010-INFO)***

Proposed form EJT-010-INFO has been developed to provide parties with information about the expedited jury trial process. The proposed rules require that all parties be provided with the information sheet before agreeing to an expedited jury trial in order to ensure that parties are fully informed about any rights they are waiving in the process. (See rule 3.1548(b)(1).)

Chapter 4.5 of division 15 of title 3 of the California Rules of Court would be adopted effective January 1, 2011, to read as follows:

1  
2 **Chapter 4.5. Expedited Jury Trials**  
3

4 **Rule 3.1545. Definitions**  
5

6 As used in this chapter, unless the context or subject matter otherwise requires:  
7

8 (1) “Consent Order” means the consent order granting an expedited jury trial described in  
9 rules 3.1547 and 3.1548.

10  
11 (2) “Expedited jury trial” means a consensual, binding jury trial before a reduced jury panel  
12 and a judicial officer.

13  
14 (3) “High/low agreement” means a written agreement voluntarily entered into by the parties  
15 that specifies a minimum amount of damages that the plaintiff is guaranteed to receive  
16 from the defendant, and a maximum amount of damages that the defendant will be liable  
17 for, regardless of the ultimate verdict issued by the jury.  
18

19 **Rule 3.1546. Applicable rules and procedures**  
20

21 **(a) Applicable rules and law**  
22

23 The procedures and rules in this chapter apply to expedited jury trials unless the parties  
24 agree otherwise as permitted under rule 3.1548(b)–(c) and the court so orders. Any matters  
25 not expressly addressed by the rules in this chapter or in a Consent Order authorized by  
26 this chapter are governed by applicable statutes and rules governing civil actions.  
27

28 **(b) Assignment of judicial officers**  
29

30 The presiding judge is responsible for the assignment of a judicial officer to conduct an  
31 expedited jury trial. A temporary judge requested by the parties under rules 2.830 – 2.835,  
32 whether or not privately compensated, may not be appointed to conduct an expedited jury  
33 trial.  
34

35 **(c) Other programs**  
36

37 This chapter does not limit the adoption or use of other expedited trial or alternative  
38 dispute resolution programs or procedures.  
39

40 **Rule 3.1547. Consent of parties**  
41

42 **(a) Binding consent**  
43

44 All parties and their counsel if represented must sign a proposed consent order granting an  
45 expedited jury trial. Except as provided in subdivision (c), the agreement to participate in  
46 the expedited jury trial process is binding upon the parties unless:

- 1  
2 (1) All parties stipulate to end the agreement to participate;  
3  
4 (2) The court, on its own motion or at the request of a party by noticed motion, finds that  
5 good cause exists for the action not to proceed under the rules of this chapter.  
6

7 **(b) Timing of agreement**  
8

9 Any agreement to engage in an expedited jury trial under this chapter may be entered into  
10 only after a dispute has arisen and a case has been filed.  
11

12 **(c) Case involving minor, incompetent person, or person with conservator**  
13

14 For an expedited jury trial involving a minor, an incompetent person, or a person for whom  
15 a conservator has been appointed, the court must approve the use of an expedited jury trial  
16 and any high/low agreements or other stipulations before the trial.  
17

18 **Rule 3.1548. Consent Order**  
19

20 **(a) Submitting proposed Consent Order to the court**  
21

- 22 (1) Unless the court otherwise allows, to be eligible to participate in an expedited jury  
23 trial, the parties must submit to the court, no later than 30 days before any assigned  
24 trial date, a proposed consent order granting an expedited jury trial.  
25  
26 (2) The parties may enter into written stipulations regarding any high/low agreements or  
27 other matters. A high/low agreement may be submitted to the court with the  
28 proposed Consent Order or disclosed later in the action only in the following  
29 circumstances:  
30  
31 (A) Upon agreement of the parties;  
32  
33 (B) In any case involving a minor, an incompetent person, or a person for whom a  
34 conservator has been appointed; or  
35  
36 (C) If necessary for enforcement of the judgment.  
37

38 **(b) Mandatory content of proposed Consent Order**  
39

40 The proposed Consent Order submitted to the court must include:  
41

- 42 (1) A preliminary statement that each named party and any insurance carrier responsible  
43 for providing coverage or defense on behalf of a party, individually identified in the  
44 proposed Consent Order, has been informed of the rules and procedures for an  
45 expedited jury trial and provided with the Judicial Council information sheet  
46 regarding expedited jury trials, has agreed to take part in the expedited jury trial

1 process, and has agreed to all the specific provisions set forth in the Consent Order;  
2 and

3  
4 (2) The parties' agreement as to the following:

5  
6 (A) That all parties waive all rights to appeal and to move for directed verdict or  
7 make any post-trial motions, except as provided in rules 3.1555 and 3.1556;

8  
9 (B) That each side will have three hours in which to present its case;

10  
11 (C) That the jury is to be composed of eight or fewer jurors with no alternates;

12  
13 (D) That each side will be limited to three peremptory challenges unless the court  
14 permits an additional challenge in cases with more than two sides as provided  
15 in rule 3.1550(b); and

16  
17 (E) That the trial and pretrial matters will proceed under (A)–(D) and, unless the  
18 parties expressly agree otherwise in the proposed Consent Order, under all  
19 other rules in this chapter.

20  
21 **(c) Optional content of proposed Consent Order**

22  
23 The proposed Consent Order also may include other agreements of the parties, including  
24 the following:

25  
26 (1) Modifications of the timelines for pretrial submissions required by rule 3.1549;

27  
28 (2) Limitations on the number of witnesses per party, including expert witnesses;

29  
30 (3) Modification of statutory or rule provisions regarding exchange of expert witness  
31 information and presentation of testimony by such witnesses;

32  
33 (4) Allocation of the time periods stated in rule 3.1551, including how arguments and  
34 cross-examination may be used by each party in the three-hour time frame;

35  
36 (5) Any evidentiary matters agreed to by the parties, including any stipulations or  
37 admissions regarding factual matters;

38  
39 (6) Any agreements about what constitutes necessary or relevant evidence for a  
40 particular factual determination;

41  
42 (7) Agreements about admissibility of particular exhibits or demonstrative evidence  
43 without the legally required authentication or foundation;

44  
45 (8) Agreements about admissibility of video or written depositions and declarations;  
46



1       (9) Agreements about any other evidentiary issues or the application of any of the rules  
2       of evidence;

3  
4       (10) Agreements to use photographs, diagrams, slides, power point presentations,  
5       overhead projections, notebooks of exhibits, or other manners of presentation of  
6       information to the jury;

7  
8       (11) Agreements concerning the time frame for filing and serving motions in limine; and  
9

10       (12) Agreements concerning numbers of jurors required for jury verdicts in cases with  
11       fewer than eight jurors.

12  
13       **(d) Court action**

14  
15       The court must issue the Consent Order as proposed by the parties unless the court finds  
16       good cause why the action should not proceed through the expedited jury trial process, in  
17       which case the court may deny the proposed Consent Order in its entirety.

18  
19       **Rule 3.1549. Pretrial submissions**

20  
21       **(a) Service**

22  
23       Service under this rule must be by a means consistent with Code of Civil Procedure  
24       sections 1011, 1012, and 1013 or rule 2.260 and be reasonably calculated to assure  
25       delivery to the other party or parties no later than the close of business on the last day  
26       provided below for service.

27  
28       **(b) Pretrial exchange**

29  
30       Not later than 25 days before trial, each party must serve on all other parties the following:

31  
32       (1) Copies of any documentary evidence the party intends to introduce at trial (except  
33       for documentary evidence to be used solely for impeachment or rebuttal), including,  
34       but not limited to medical bills, medical records, and lost income records;

35  
36       (2) A list of all witnesses that the party intends to call at trial, except for witnesses to be  
37       used solely for impeachment or rebuttal, and designation of whether the testimony  
38       will be in person, by video, or by deposition transcript;

39  
40       (3) A list of depositions that the party intends to use at trial, except for depositions to be  
41       used solely for impeachment or rebuttal;

42  
43       (4) A copy of any audiotapes, videotapes, digital video discs (DVDs), compact discs, or  
44       other similar recorded materials that the party intends to use at trial for evidentiary  
45       purposes, except recorded materials to be used solely for impeachment or rebuttal  
46       and recorded material intended to be used solely for argument;

- 1  
2 (5) A copy of any proposed jury questionnaires (parties are encouraged to agree in  
3 advance to a questionnaire);  
4  
5 (6) A list of proposed approved introductory instructions, pre-instructions, and  
6 instructions to be read by the judge to the jury;  
7  
8 (7) A copy of any proposed special jury instructions in the form and format described in  
9 rule 2.1055;  
10  
11 (8) Any proposed verdict forms;  
12  
13 (9) A special glossary, if the case involves technical or unusual vocabulary; and  
14  
15 (10) Motions in limine.

17 **(c) Supplemental exchange**

18  
19 No later than 20 days before trial, a party may serve on any other party any additional  
20 documentary evidence and a list of any additional witnesses that the party intends to use at  
21 trial in light of the exchange of information under subdivision (b).  
22

23 **(d) Submissions to court**

24  
25 No later than 20 days before trial, each party must file all motions in limine and must lodge  
26 with the court any items served under subdivisions (b)(2)–(9) and (c).  
27

28 **(e) Preclusionary effect**

29  
30 Unless good cause is shown for any omission, failure to serve documentary evidence as  
31 required under this rule will be grounds for preclusion of the evidence at the time of trial.  
32

33 **(f) Pretrial conference**

34  
35 No later than 15 days before trial, unless that period is modified by the Consent Order, the  
36 judicial officer assigned to the case must conduct a pretrial conference, at which time  
37 objections to any documentary evidence previously submitted will be determined. If there  
38 are no objections at that time, counsel must stipulate in writing to the admissibility of the  
39 evidence. Matters to be addressed at the pretrial conference, in addition to the evidentiary  
40 objections, include the following:  
41

- 42 (1) Any evidentiary matters agreed to by the parties, including any stipulations or  
43 admissions regarding factual matters;  
44  
45 (2) Any agreement of the parties regarding limitations on necessary or relevant  
46 evidence, including any limitations on expert witness testimony;

- 1  
2 (3) Any agreements of the parties to use photographs, diagrams, slides, power point  
3 presentations, overhead projections, notebooks of exhibits, or other manners of  
4 presentation of information to the jury;  
5  
6 (4) Admissibility of any exhibits or demonstrative evidence without legally required  
7 authentication or foundation;  
8  
9 (5) Admissibility of video or written depositions and declarations and objections to any  
10 portions thereof;  
11  
12 (6) Objections to and admissibility of any recorded materials a party has designated for  
13 use at trial;  
14  
15 (7) Jury questionnaires;  
16  
17 (8) Jury instructions;  
18  
19 (9) Special verdict forms;  
20  
21 (10) Allocation of time for each party's case; and  
22  
23 (11) Motions in limine filed before the pretrial conference.  
24

25 **(g) Expert witness documents**

26  
27 Any documents produced at the deposition of an expert witness are deemed to have been  
28 timely exchanged for the purpose of (c) above.  
29

30 **Rule 3.1550. Jury size and selection**

31  
32 **(a) Jury size**

33  
34 Juries in expedited jury trial cases will be composed of eight jurors unless the parties have  
35 agreed to fewer, selected from a venire called for a regular term of court. No alternates will  
36 be selected.  
37

38 **(b) Peremptory challenges**

39  
40 The court must allow each side three peremptory challenges. If there are more than two  
41 parties in a case and more than two sides, as determined by the court under section 231(c)  
42 of the Code of Civil Procedure, the parties may request one additional peremptory  
43 challenge each, which is to be granted by the court as the interests of justice may require.  
44

45 **(c) Voir dire**

46

1 Approximately one hour will be devoted to voir dire, with 15 minutes each allowed for the  
2 judicial officer and each side. Parties are encouraged to submit a joint form questionnaire  
3 to be used with prospective jurors to help expedite the voir dire process.  
4

5 **Rule 3.1551. Time limits**  
6

7 Excluding jury selection, each side will be allowed three hours to present its case, including  
8 opening and closing arguments, unless the court upon a finding of good cause allows additional  
9 time. The amount of time allotted for each side includes the time that the party spends on cross-  
10 examination. The parties are encouraged to streamline the trial process by limiting the number of  
11 live witnesses. The goal is to complete an expedited jury trial within one full trial day. Nothing  
12 in this rule is intended to preclude a jury from deliberating as long as needed.  
13

14 **Rule 3.1552. Case presentation**  
15

16 **(a) Methods of presentation**  
17

18 Upon agreement of the parties and with the approval of the judicial officer, the parties may  
19 present summaries and may use photographs, diagrams, slides, power point presentations,  
20 overhead projections, individual notebooks of exhibits for submission to the jurors, or  
21 other innovative methods of presentation approved at the pretrial conference.  
22

23 **(b) Exchange of items**  
24

25 Anything to be submitted to the jury as part of the evidentiary presentation of the case in  
26 chief must be exchanged 20 days in advance of the trial, unless that period is modified by  
27 the Consent Order. This rule does not apply to items to be used solely for closing  
28 argument.  
29

30 **(c) High/low agreements**  
31

32 Neither the existence of, nor the amounts contained in any high/low agreements, may be  
33 disclosed to the jury.  
34

35 **(d) Stipulations regarding facts**  
36

37 The parties should stipulate to factual and evidentiary matters to the greatest extent  
38 possible.  
39

40 **Rule 3.1553. Presentation of evidence**  
41

42 **(a) Applicable law**  
43

44 The rules of evidence apply in expedited jury trials unless the parties stipulate otherwise to  
45 relaxed rules. Any stipulation by the parties to use relaxed rules of evidence may not be

1 construed to eliminate or in any way affect the right of a witness or party to invoke any  
2 applicable privilege or other law protecting confidentiality.

3  
4 **(b) Stipulations regarding rules of evidence**

5  
6 The parties may offer such evidence as is relevant and material to the dispute. The parties  
7 may, in the Consent Order, agree to modify the rules of evidence for the trial. The parties  
8 should to the extent feasible stipulate to modes and methods of presentation that will  
9 expedite the process, either in the Consent Order or at the pretrial conference.

10  
11 **(c) Objections**

12  
13 Objections to evidence and motions to exclude evidence must be submitted in a timely  
14 manner. Failure to raise an objection before trial does not preclude making an objection or  
15 motion to exclude at trial.

16  
17 **(d) Subpoenas and notices to appear**

18  
19 The right to issue subpoenas and notices to appear to secure the attendance of witnesses or  
20 the production of documents at trial is as provided in the Code of Civil Procedure.

21  
22 **Rule 3.1554. Jury verdict**

23  
24 **(a) Binding nature**

25  
26 The verdict in an expedited jury trial case is binding, subject to any written high/low  
27 agreement or other stipulations concerning the amount of the award agreed upon by the  
28 parties.

29  
30 **(b) Number of jurors required for verdict**

31  
32 A vote of six of the eight jurors is required for a verdict, unless the parties stipulate  
33 otherwise.

34  
35 **Rule 3.1555. No directed verdict, additur, or remittitur**

36  
37 Parties must agree to waive any motions for directed verdicts, motions to set aside the verdict or  
38 any judgment rendered by the jury, or motions for a new trial on the basis of inadequate or  
39 excessive damages. The court may not set aside any verdict or any judgment, may not direct that  
40 judgment be entered in favor of a party entitled to judgment as a matter of law, and may not  
41 order a new trial except on the grounds stated in rule 3.1556.

42  
43 **Rule 3.1556. Limited right to appeal and post-trial motions**

44  
45 **(a) Limited grounds for vacating judgment**

46

1 By agreeing to take part in the expedited jury trial process, the parties agree to waive the  
2 right to bring post-trial motions or to appeal from the determination of the matter, except  
3 as stated in this rule. The only grounds on which a party may move for a new trial or  
4 appeal are the following:

5  
6 (1) Judicial officer misconduct that materially affected the substantial rights of a party;

7  
8 (2) Misconduct of the jury; or

9  
10 (3) Corruption, fraud, or other undue means employed in the proceedings of the court,  
11 jury, or adverse party in such a way that either party was prevented from having a  
12 fair expedited jury trial.

13  
14 **(b) Motion for new trial**

15  
16 Within 10 court days of entry of jury verdict, a party may apply for a new trial on any of  
17 the grounds in (a).

18  
19 **(c) Other post-trial motions**

20  
21 Except as provided in (b), parties to an expedited jury trial may not make any post-trial  
22 motions except for motions relating to costs and attorney's fees.

23  
24 **(d) Appeal**

25  
26 Before filing an appeal, a party must make a motion for a new trial under (b). If the motion  
27 for new trial is denied, the party may appeal the judgment to the appropriate court with  
28 appellate jurisdiction and seek a new expedited jury trial on any of the grounds in (a).  
29 Parties to an expedited jury trial may not appeal on any other ground.

30  
31 **Rule 3.1557. Costs and attorney's fees**

32  
33 All statutes and rules governing costs and attorney's fees apply in expedited jury trials unless the  
34 parties agree otherwise in the Consent Order.

**EJT-010-INFO****Expedited Jury Trial Information Sheet**

This information sheet is for anyone involved in a civil lawsuit who is considering taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial. Taking part in such a trial also means you give up your usual rights to appeal. **Please read this information sheet before you agree to have your case tried under the expedited jury trial procedures.**

This information sheet does not cover everything you may need to know about expedited jury trials. It is only meant to give you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with your attorney. If you do not have an attorney, you should consult with one before agreeing to an expedited jury trial.**

**① What is an expedited jury trial?**

An expedited jury trial is a short trial, generally lasting only one day. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision as to whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 3 hours to put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors, instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.
- **All parties must waive their rights to appeal.** In order to help keep the costs of litigation down, there are no appeals following an expedited jury trial except in very limited circumstances. These are explained more fully in ⑤ below.

**② Will the case be in front of a judge?**

The trial will take place at a courthouse and a judge or, if you agree, a court commissioner or a temporary judge

(an experienced attorney whom the court appoints to act as a judge) will handle the trial.

**③ Does the jury have to reach a unanimous decision?**

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree to reach a verdict in an expedited jury trial.

**④ Is the decision of the jury binding on the parties?**

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, which may require one or more defendants to pay money to the plaintiff or may provide that the plaintiff gets no money at all.

But parties who agree to take part in expedited jury trials are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as “high/low agreements.” You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

**⑤ Why do I give up most of my rights to appeal?**

In order to keep costs down and provide a faster end to the case, all parties who agree to take part in an expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury;
- Corruption or fraud or some other bad act



like bribery that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

### 6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials. The expedited jury trial rules set up some special procedures to help this happen. For example, the rules require that the parties show each other all exhibits and tell each other what witnesses will be at the trial several weeks before the trial takes place. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, or what facts the parties already agree to and so do not need to take to the jury. The parties can agree to modify many of the rules that apply to trials generally or even to expedited jury trials (except for the four rules described in 1 above).

### 7 Who can have an expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in a single day. To have an expedited jury trial, both sides must want one. Each side must agree that it will use only three hours to put on its case and agree to all the other rules in 1 above. The agreements between the parties must be put into writing in a document called a Proposed Consent Order Granting an Expedited Jury Trial, which will be submitted to the court for approval. The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

### 8 Can I change my mind after agreeing to an expedited jury trial?

No, not unless the other side or the court agrees. Once you and the other side have agreed to take part in an expedited jury trial, that agreement is binding on both sides. After you enter into the agreement, it can be changed only if **both** sides want to change it or stop the process, or if a court decides there are good reasons why the expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to an expedited jury trial.

You can find the rules governing expedited jury trials in the California Rules of Court, at rules 3.1545--3.1557. You can see these rules at any county law library or online at [www.courts.ca.gov/rules](http://www.courts.ca.gov/rules).



## Item SPR10-16 Response Form

**Title:** **Civil Trials: Expedited Jury Trials** (adopt Cal. Rules of Court, rules 3.1545–3.1558 and adopt form EJT-010-INFO)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*