

Invitation to Comment

<p>Title</p>	<p>Civil Pretrial Rules (amend Cal. Rules of Court, rules 3.250, 3.727, 3.728, and 3.1112; and adopt rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1412, 3.1414, 3.1416, 3.1418, 3.1420, and 3.1422)</p>
<p>Summary</p>	<p>To improve the parties’ preparation for civil trials, a comprehensive set of new pretrial rules is proposed. These rules would require the parties to exchange witness lists, exhibit lists, and other documents in a timely manner before trial. They would authorize the courts to hold optional trial management conferences. Also, the civil case management rules would be amended to permit courts to require the parties in appropriate cases to prepare joint witness lists, joint exhibit lists, and other joint documents.</p> <p>An earlier version of the proposed civil pretrial rules was circulated in spring 2007. In response to the extensive public comments, a number of significant changes have been made to the rules. The revised pretrial rules would not apply to limited civil cases; the proposed meet-and-confer rule has been dropped; and many modifications have been made to individual rules. To provide the public with an opportunity to comment on the revised pretrial rules, they are being recirculated.</p>
<p>Source</p>	<p>Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair</p> <p>Uniform Rules Subcommittee Hon. Brian R. Van Camp, Chair</p>
<p>Staff</p>	<p>Patrick O’Donnell, Committee Counsel, 415-865-7665, patrick.o’donnell@jud.ca.gov</p>
<p>Discussion</p>	<p><u>Background</u> Some courts have local rules regarding pretrial conferences and the documents that must be exchanged by the parties and submitted to the court at or before the conference.¹ These rules help the parties and the courts prepare for trial. They ensure that witness lists, exhibit lists, jury instructions, and other documents</p>

¹ See, e.g., the following superior courts’ local rules: Alameda Local Rule 4.6; Los Angeles Local Rule 7.9(h); Marin Local Rule 1.23; Mendocino Local Rules 5.1–5.5; San Bernardino Local Rule 4.11; San Diego Local Rule 2.15; San Francisco Local Rules 6.2, 6.3, and 6.8; Solano Local Rule 4.12; and Ventura Local Rule 8.12.

have been timely prepared, served on all parties, and submitted to the court.

The California Rules of Court currently contain no statewide civil pretrial rules. As a result, there are no established pretrial procedures in many courts and the courts with pretrial rules have different local practices and procedures. The proposed rules would provide a uniform set of pretrial rules for practitioners, courts, and judges to use to prepare for the trial of civil cases. They would also provide flexibility so that courts and parties may modify the rules in appropriate cases.

Proposed Rules

The Civil and Small Claims Advisory Committee presents the following revised civil pretrial rules for public consideration and comment:

1. Rule 3.1400 (Purpose, application, and scope);
2. Rule 3.1402 (Sanctions);
3. Rule 3.1404 (Jury deposits);
4. Rule 3.1406 (Exchange of documents);
5. Rule 3.1408 (Trial management conference);
6. Rule 3.1412 (Motions in limine);
7. Rule 3.1414 (Use of transcripts of deposition testimony);
8. Rule 3.1416 (Video or audio presentations);
9. Rule 3.1418 (Statement of the case to be read to the jury);
10. Rule 3.1420 (Trial briefs); and
11. Rule 3.1422 (Jury instructions).²

² The proposed civil pretrial rules previously included a rule requiring the parties to confer on various issues before the trial management conference or, if no conference is held, before trial. The text of the rule, which would be eliminated under the current proposal, is included in the attached rules text as rule 3.1410 (shown as struck out) for the purposes of public comment.

In addition, the committee recommends the amendment of the following rules on the filing of papers, civil case management, and motion papers:

12. Rule 3.250 (Limitations on the filing of papers);
13. Rule 3.727 (Subjects to be considered at the case management conference);
14. Rule 3.728 (Case management order); and
15. Rule 3.1112 (Motion papers).

The text of the new and amended rules is attached at pages 10–19.

New Civil Pretrial Rules

Eleven new pretrial rules are proposed.³ These rules are based on the best practices contained in the local rules previously adopted by courts around the state. The rules cover a wide range of issues from jury deposits and exchange of documents to trial management conferences and the use of depositions at trial. The rules provide procedures for handling all these issues. The following summary describes the new rules.

1. Rule 3.1400 (Purpose, application, and scope)

This preliminary rule prescribes the purpose, application, and scope of the new pretrial rules.

First, rule 3.1400 explains that the rules are intended to ensure that all parties in civil cases are prepared for trial so that trials will be conducted fairly and efficiently. (Rule 3.1400(a).)

The rule further provides that the new pretrial rules are applicable to all general civil cases, except complex and limited civil cases. The exception for limited civil cases was added based on previous comments. Parties would be allowed to stipulate to a different set of pretrial procedures with the approval of the court. Also, the court would have the discretion in an individual case to modify or waive any provision or provisions in the pretrial rules. (Rule 3.1400(b)(1)–(2).)

³ The previous version of this proposal contained four additional rules; however, these have been either incorporated into the proposed rules or eliminated.

Third, so that the parties will have adequate notice of any modifications or waivers of the pretrial rules, rule 3.1400(c) provides that the court, if possible, should advise the parties about any modifications or waivers under subdivision (b) at the time of the case management conference under rule 3.727 and should include the modifications or waivers in its case management conference order issued under rule 3.728.

2. Rule 3.1402 (Sanctions)

This rule provides that a party's failure to comply with the pretrial rules may result in any sanction authorized by law.

3. Rule 3.1404 (Jury deposits)

Rule 3.1404 provides that each party demanding a jury trial must deposit advance jury fees, in the amount stated on the court's fee schedule, at least 25 days before the date initially set for trial, except that in unlawful detainer cases the fees must be deposited at least 5 days before the date set for trial.

4. Rule 3.1406 (Exchange of documents)

This rule requires parties to serve on all other parties specified documents before the trial management conference or, if no conference is held, before the trial. The documents to be served by each party include a statement of the case to be read to the jury; any proposed questions for voir dire to be asked by the judge; any proposed jury questionnaires; a list of all witnesses and exhibits, except for those to be used solely for impeachment or rebuttal; a list of proposed approved introductory instructions, preinstructions, and jury instructions; any special jury instructions; any proposed verdict forms; any trial briefs; an itemized list of any recorded materials, such as videotapes, to be used at trial; and designated portions of the deposition testimony to be used at trial of witnesses who are reasonably expected to be unavailable at trial. (Rule 3.1406(a).)

The rule is meant to be flexible. It is intended to work both in courts that hold trial management conferences and in those that do not. It is also designed both for courts operating under a master calendar system and for those operating under a single judge assignment system.

Existing local rules provide a wide range of different times before trial for the exchange of documents and their filing with the court. The times vary from the day of trial to weeks before trial. Rule 3.1406 provides a standard set of times for the service and filing of documents. The rule specifies that the time for service of documents is at least five court days before the trial management conference or, if there is no conference, five court days before the date set for trial. (Rule 3.1406(b).)

Comments are specifically invited on the proposed five-court day time frame for exchanging documents in subdivision (b). Should it be shortened? Some courts currently hold settlement conferences the week before trial and do not require the exchange until after the conference. Courts have found this practice to be workable and cost effective. If the rule is modified to require exchanges to take place, say, as short as one or two court days before the date set for the trial or the trial management conference, would this be sufficient time for the litigants and courts? Or do they need more time?

5. Rule 3.1408 (Trial management conference)

This rule authorizes courts by court order or local rule to order the parties in a civil case to participate in a trial management conference.⁴ The conference must be attended by the attorneys who will actually try the case and by all self-represented litigants, unless the court orders otherwise. (Rule 3.1408(a).)

Courts will prescribe the date of the trial management conference; however, the conference will be held within 10 court days of the date set for trial. This provision is intended to ensure that the trial management conferences are not held too long before the trial. (Rule 3.1408(b).)

Finally, at the trial management conference, the court may issue a trial management order or orders that will govern the proceedings in the case. (Rule 3.1408(c).)

⁴ Courts use a variety of terms to describe the conference, including final case management or status conference, issue conference, trial or pretrial conference, trial readiness conference, and pre-voir dire conference. The *California Judges Benchbook: Civil Proceedings—Trial* (CJER 1997) uses the term “trial management conference.” The term “trial management conference” is also used in Code of Civil Procedure Section 367.5 and rule 3.670 on telephonic appearances. Because the meaning of the term “trial management conference” distinguishes this conference from any earlier conferences, underscores the responsibility of the judge in managing the trial, and is clear, that term is used in these rules.

6. Rule 3.1410 (Parties to confer)(to be eliminated)

Rule 3.1410 was included in the rules previously circulated for comment. It would have required the parties to confer at least two court days before the trial management conference or, if no conference is held, at least two court days before trial, to discuss specified issues. It also would have encouraged parties to prepare stipulations on trial issues that are not disputed.

On further review, the Civil and Small Claims Advisory Committee decided not to include this rule on conferring in the pretrial rules proposed for adoption this year. It concluded that requiring parties to confer in every unlimited civil case would be unduly burdensome and unnecessary. This, of course, does not mean that parties cannot, or should not, confer voluntarily. That often will be appropriate. But the committee decided that it is not necessary to require the parties to confer in every case and so proposed rule 3.1410 has been dropped.

7. Rule 3.1412 (Motions in limine)

Rule 3.1412 defines a motion in limine as a pretrial motion made in connection with the admissibility of evidence. It requires motions in limine to follow the requirements of rule 3.1112 for motions and to specifically identify the evidence that is the subject of the motion. The rule also requires the motions to include a statement that the parties have conferred regarding the motion. (Rule 3.1412(a)–(b).)

The proposed rule prescribes the time for serving and filing motions in limine, oppositions, and replies, which would be in accordance with the times for noticed motions under Code of Civil Procedure section 1005. (Rule 3.1412(c)(1).) For the purpose of this provision, the hearing date for motions in limine is the date set for trial. The rule also provides that, notwithstanding (c)(1), the court, after conferring with the parties, may modify either or both the dates for filing and service, and the date for the hearing, of any and all motions in limine. (Rule 3.1412(c)(2).)

Comments are specifically invited on whether pretrial motions in limine should be required to be brought as noticed motions, as proposed. Commentators who disagree with this proposal are asked to include in their comments specific recommendations for alternative timing and procedures for motions in limine.

Proposed rule 3.1412 provides that motions in limine must not be used for impermissible purposes—specifically, to obtain summary judgment, summary adjudication, precedence of issues for trial, or judgment on the pleadings. (Rule 3.1412(d).) When this rule was previously circulated, a commentator stated that it is “unnecessary to provide a list of impermissible uses of a motion in limine.” In particular, questions have been raised about listing (d)(2)(motions for preference) and (d)(3)(judgment on the pleadings). Comments are invited on whether subdivision (d) or any part of it is necessary or desirable.

Finally, the rule provides that the court may defer ruling on a motion in limine and may order that no mention or display of the matter that is the subject of the motion be made in the presence of the jury, unless and until the court orders otherwise. (Rule 3.1412(e).)

8. Rule 3.1414 (Use of transcripts of deposition testimony)

This rule provides that a party that intends to use at trial the deposition transcript of a witness who is reasonably expected to be unavailable for trial must follow certain procedures. The rule contains provisions relating to the service and filing of objections to, and counterdesignations of, transcripts. (Rule 3.1414(a)–(c).)

The rule provides that a party that intends to use the deposition transcript at trial of any witness that is reasonably expected to be unavailable must lodge the original transcript with the courtroom clerk no later than the day set for trial. (Rule 3.1414(d).) Of course, before using a transcript for any purpose, the original transcript needs to be lodged; the question arises whether this requirement might be unclear under the proposed language in (d). Thus, should another sentence be added to subdivision (d) stating, for instance, that “A party that intends to use the deposition transcript at trial for any other purpose including impeachment must lodge the original deposition transcript before the transcript is used [or at the beginning of the day on which the transcript is to be used]”? Or should the rule be silent on this matter since it relates to the trial rather than pretrial matters and only to transcripts of a witness who is reasonably expected to be unavailable?

Finally, proposed rule 3.14124 includes an exception for situations in which the proponent of the use of a deposition transcript could not reasonably have anticipated the need for the

use of the transcript at trial. In these circumstances, the court may permit the use of the transcript in the interests of justice, under such conditions as may be appropriate. (Rule 3.1414(e).)

9. Rule 3.1416 (Video or audio presentations)

This rule specifies that parties intending to use a video or an audio presentation at trial, except those to be used solely for impeachment or rebuttal, must prepare a transcript of the presentation, serve it on all parties, and submit it to the court. This rule also contains a provision similar to 3.1414(e) for situations in which the proponent could not reasonably have anticipated the need for the use of the video or audio presentation at trial.

10. Rule 3.1418 (Statement of the case)

This rule requires the parties to prepare a brief, nonargumentative joint statement of the facts of the case to be read by the judge to the jury, unless the court under rule 2.1034 permits brief opening statements by counsel to the jury panel.

11. Rule 3.1420 (Trial briefs)

This rule permits each party to serve and file a trial brief. It also authorizes the court to order the parties to file trial briefs.

12. Rule 3.1422 (Jury instructions)

This rule provides that, on the date set for trial, each party must serve and file a full set of all proposed introductory instructions, preinstructions, and jury instructions in the format prescribed under rule 2.1055. (Rule 3.1422(a).) The rule also authorizes the court to order the parties to meet and confer, including in person if necessary, to prepare a set of joint introductory instructions, preinstructions, and standard and special jury instructions, and a joint verdict form. If the parties are unable to agree, they may prepare separate sets of instructions and verdict forms. (Rule 3.1422(b).)

Amended Rules

In addition to the adoption of the preceding eleven new pretrial rules, this proposal would amend several existing rules to implement or make other rules consistent with the new pretrial rules.

13. Rule 3.250 (Limitations on the filing of papers)

Rule 3.250(15) would be amended to clarify that the list of expert

witnesses that is not to be filed under the rule is the list of expert witnesses that is exchanged in discovery under Code of Civil Procedure section 2034.260(b)(1). The list of experts under the discovery code is different from the list of experts to be exchanged before trial and filed with the court under rule 3.1406(a)(4).

14. Rule 3.727 (Subjects to be considered at the case management conference)

Rule 3.727 would be amended to add two new items to the list of subjects to be considered at the case management conference:

(13) “Whether the case is an appropriate one for the court to require the parties to prepare a joint statement of the case to be read to the jury, a joint witness list, a joint exhibit list, a joint set of approved or special preinstructions and instructions, or a joint verdict form;” and (14) “Whether the case is an appropriate one for modifying or waiving any of the pretrial rules in division 14 (commencing with rule 3.1400).”

15. Rule 3.728 (Case management order)

Rule 3.728 would be amended to add two new items to the list of appropriate provisions in a case management conference order:

(12) “Whether the parties are required to prepare a joint statement of the case to be read to the jury, a joint witness list, a joint exhibit list, a joint set of approved or special preinstructions and instructions, or a joint verdict form”; and (13) “Whether any of the pretrial rules in division 14 (commencing with rule 3.1400) are modified or waived under rule 3.1400(b).”

16. Rule 3.1112 (Motion papers)

In subdivision (f), on motions in limine, the first sentence would add “in a limited civil case” after “motion in limine,” because only in limited civil cases will there not be a need to file a notice of motion. Under new rule 3.1412(b), motions in limine in unlimited civil cases will need to follow the requirements of rule 3.1112. Also, the last sentence of rule 3.1112(f) would be deleted because it would be inconsistent with the time requirements in new rule 3.1412.

Attachments

Rules 3.250, 3.727, 3.728, and 3.1112 of the California Rules of Court would be amended and rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1412, 3.1414, 3.1416, 3.1418, 3.1420, and 3.1422 would be adopted, effective January 1, 2008, to read:

1 **Rule 3.250. Limitations on the filing of papers**

2
3 **(a) Papers not to be filed**

4
5 The following papers, whether offered separately or as attachments to other
6 documents, may not be filed unless they are offered as relevant to the
7 determination of an issue in a law and motion proceeding or other hearing or
8 are ordered filed for good cause:

9
10 (1)–(14) * * *

11
12 (15) List of expert witnesses whose opinion a party intends to offer in
13 evidence at trial and declaration exchanged under Code of Civil
14 Procedure section 2034.260.

15
16 (16)–(23) * * *

17
18 **(b)–(c) * * ***

19
20 **Rule 3.727. Subjects to be considered at the case management conference**

21
22 In any case management conference or review conducted under this chapter, the
23 parties must address, if applicable, and the court may take appropriate action with
24 respect to, the following:

25
26 (1)–(12) * * *

27
28 (13) Whether the case is an appropriate one for the court to require the parties to
29 prepare a joint statement of the case to be read to the jury, a joint witness list,
30 a joint exhibit list, a joint set of approved or special preinstructions and
31 instructions, or a joint verdict form;

32
33 (14) Whether the case is an appropriate one for modifying or waiving any of the
34 pretrial rules in division 14 (commencing with rule 3.1400);

35
36 ~~(13)~~(15) * * *

37
38 ~~(14)~~(16) * * *

39
40 ~~(15)~~(17) * * *

1
2 ~~(16)~~(18) * * *

3
4 ~~(17)~~(19) * * *

5
6 ~~(18)~~(20) * * *

7
8 ~~(19)~~(21) * * *

9
10 ~~(20)~~(22) * * *

11
12 **Rule 3.728. Case management order**

13
14 The case management conference must be conducted in the manner provided by
15 local rule. The court must enter a case management order setting a schedule for
16 subsequent proceedings and otherwise providing for the management of the case.
17 The order may include appropriate provisions, such as:

18
19 (1)–(10) * * *

20
21 (11) The date, time, and place for the ~~final case~~ trial management conference
22 ~~before trial~~ if such a conference is required by the court or the judge assigned
23 to the case;

24
25 (12) Whether the parties are required to prepare a joint statement of the case to be
26 read to the jury, a joint witness list, a joint exhibit list, a joint set of approved
27 or special preinstructions and instructions, or a joint verdict form;

28
29 (13) Whether any of the pretrial rules in division 14 (commencing with rule
30 3.1400) are modified or waived under rule 3.1400(b);

31
32 ~~(12)~~(14) * * *

33
34 ~~(13)~~(15) * * *

35
36 **Rule 3.1112. Motions papers and ~~other pleadings~~**

37
38 (a) **Motions Required papers**

39 * * *

40
41
42 (b)–(e) * * *

1 (f) **Motions in limine**

2
3 Notwithstanding (a), a motion in limine in a limited civil case filed before or
4 during trial need not be accompanied by a notice of hearing. ~~The timing and~~
5 ~~place of the filing and service of the motion are at the discretion of the trial~~
6 ~~judge.~~

7
8 **Division 14. Pretrial [Reserved]**

9
10 **Rule 3.1400. Purpose, application, and scope**

11
12 (a) **Purpose**

13
14 The purpose of the rules in this division is to ensure that all parties in civil
15 cases are prepared for trial so that trials will be conducted fairly and
16 efficiently.

17
18 (b) **Application and scope**

19
20 The rules in this division apply to all general civil cases except limited civil
21 cases and complex cases, unless:

- 22
23 (1) The parties stipulate to a different set of pretrial procedures in an
24 individual case and the court approves; or
25
26 (2) The court in its discretion in an individual case modifies or waives any
27 provision or provisions of the rules in this division.

28
29 (c) **Modification or waiver of rule**

30
31 If the court determines under (b) to modify or waive any particular
32 provisions of the pretrial rules in this division, the court, if possible, should
33 advise the parties about the modifications or waivers at the time of the case
34 management conference specified in rule 3.727 and should include the
35 modifications or waivers in the case management order issued under rule
36 3.728.

37
38 **Rule 3.1402. Sanctions**

39
40 Failure to comply with the rules in this division may result, in the discretion of the
41 court, in any sanction authorized by law.

1 **Rule 3.1404. Jury deposits**

2
3 If a jury trial is demanded, the jury fees must be deposited in compliance with
4 Code of Civil Procedure section 631 et seq. At least 25 calendar days before the
5 date initially set for trial, each party demanding a jury trial must deposit advance
6 jury fees in the amount stated on the court's fee schedule, except that in unlawful
7 detainer actions the fees must be deposited at least 5 days before the date set for
8 trial.

9
10 **Rule 3.1406. Exchange of documents**

11
12 **(a) Documents to be served**

13
14 Unless otherwise ordered under rule 3.728, before the trial management
15 conference or, if no conference is held, before the date set for trial, each
16 party must serve on all other parties the following:

- 17
18 (1) A statement of the case to be read by the judge to the jury, unless the
19 court permits counsel to present brief opening statements to the jury
20 panel under rule 2.1034;
21
22 (2) Any proposed questions for voir dire to be asked by the judge;
23
24 (3) Any proposed jury questionnaires;
25
26 (4) A list of all witnesses, including expert witnesses, that the party intends
27 to call at trial, except for witnesses to be used solely for impeachment
28 or rebuttal;
29
30 (5) A list that identifies with particularity all exhibits the party intends to
31 introduce at trial, except for exhibits to be used solely for impeachment
32 or rebuttal;
33
34 (6) A list of proposed approved introductory instructions, preinstructions,
35 and instructions to be read by the judge to the jury;
36
37 (7) A copy of any proposed special jury instructions in the form and format
38 prescribed in rule 2.1055;
39
40 (8) Any proposed verdict forms;
41
42 (9) Any trial briefs;
43

1 (10) An itemized list of any audiotapes, videotapes, DVDs, CDs, or other
2 similar recorded materials that the party intends to use at trial, except
3 recorded materials to be used solely for impeachment or rebuttal;

4
5 (11) A special glossary, if the case involves technical or unusual vocabulary;
6 and;

7
8 (12) Designated portions of deposition testimony that the party intends to
9 use at trial of witnesses who are reasonably expected to be unavailable
10 for trial.

11
12 **(b) Timing**

13
14 (1) Service on parties

15
16 Unless otherwise ordered under rule 3.728, all the documents listed in
17 (a)(1)–(12) must be served at least 5 court days before the trial
18 management conference or, if no trial management conference is held,
19 at least 5 court days before the date set for trial.

20
21 (2) Filing with the court

22
23 Copies of all documents served under (a) must be filed with the court at
24 the same time that they are served on the parties in the case, except for
25 the designated portions of the deposition transcripts under (a)(12) that
26 must be filed with the court as provided in rule 3.1414.

27
28 **Rule 3.1408. Trial management conference**

29
30 **(a) Conference**

31
32 The court may require by court order or by local rule that the parties in a
33 civil case participate in a trial management conference held before the trial.
34 The conference must be attended by the attorneys who will actually try the
35 case and by all self-represented parties, unless the court orders otherwise.

36
37 **(b) Time of conference**

38
39 The court will prescribe the date of the conference, which will be held within
40 10 court days of the date set for trial.

41
42 **(c) Trial management order**

1 At or after the trial management conference, the court may issue a trial
2 management order or orders that will govern the proceedings in the case.
3

4 **Rule 3.1410. Parties to confer**

5
6 **(a) Conferring**

7
8 ~~At least two court days before the trial management conference or, if no~~
9 ~~conference is held, at least two court days before the trial, the parties must~~
10 ~~confer for the purpose of narrowing the issues and preparing the case for~~
11 ~~trial. The parties must attempt to resolve issues concerning:~~

- 12
13 (1) ~~Any proposed questions for voir dire by the judge;~~
14
15 (2) ~~Any proposed jury questionnaires;~~
16
17 (3) ~~The admissibility of various documents, photographs, audiotapes,~~
18 ~~videotapes, CDs, DVDs, physical objects, and other tangible things~~
19 ~~included in each party's exhibit list;~~
20
21 (4) ~~Lists of witnesses, including expert witnesses;~~
22
23 (5) ~~A statement of the case to be read to the jury or, if permitted, the brief~~
24 ~~opening statements to the jury panel by counsel under rule 2.1034;~~
25
26 (6) ~~Jury instructions and verdict forms;~~
27
28 (7) ~~The length of trial;~~
29
30 (8) ~~Any anticipated scheduling problems; and~~
31
32 (9) ~~Other trial issues.~~

33
34 **(b) Stipulations**

35
36 ~~After conferring, the parties should prepare stipulations on trial issues that~~
37 ~~are not disputed. The parties should advise the court of any stipulations at the~~
38 ~~trial management conference or, if no conference is set, before the~~
39 ~~commencement of trial.~~

40
41 **Rule 3.1412. Motions in limine**
42

1 **(a) Purpose**

2
3 A “motion in limine” is a pretrial motion made in connection with the
4 admissibility of evidence at trial.

5
6 **(b) Requirements of motion**

7
8 A motion in limine must satisfy the requirements of rule 3.1112 and must
9 specifically identify the evidence that is the subject of the motion. In
10 addition, the motion must include a statement that the parties have conferred
11 regarding the motion.

12
13 **(c) Time for service**

14
15 **(1) General**

16
17 All motions in limine, oppositions and replies must be served on all
18 other parties and filed with the court in accordance with Code of Civil
19 Procedure section 1005. For the purpose of this provision, the hearing
20 date for motions in limine is the date set for trial.

21
22 **(2) Modifications**

23
24 Notwithstanding (1), the court, after conferring with the parties, may
25 modify either or both the dates for filing and service, and the date for
26 the hearing, of any and all motions in limine.

27
28 **(d) Impermissible uses**

29
30 **(1) A motion in limine must not be used to obtain summary judgment or**
31 **summary adjudication. A motion for summary judgment or summary**
32 **adjudication may only be made in compliance with Code of Civil**
33 **Procedure section 437c and applicable rules.**

34
35 **(2) A motion in limine must not be used to obtain an order to try an issue**
36 **before the trial of another issue or issues. A motion for precedence of**
37 **issues may only be made in compliance with Code of Civil Procedure**
38 **section 598.**

39
40 **(3) A motion in limine must not be used to obtain judgment on the**
41 **pleadings. A motion for judgment on the pleadings may only be made**
42 **in compliance with Code of Civil Procedure section 438.**

1 **(e) Deferred ruling; duty of counsel if motion deferred or granted**

2
3 The court may defer ruling on a motion in limine and may order that no
4 mention or display of the matter that is the subject of the motion is to be
5 made in the presence of the jury, unless and until the court orders otherwise.
6 If the court so orders or if the motion is granted, it is the duty of counsel to
7 instruct associates, clients, witnesses, and other persons under their control
8 that no mention or display of the matter that is the subject of the motion be
9 made in the presence of the jury.

10
11 **Rule 3.1414. Use of transcripts of deposition testimony**

12
13 **(a) Time for service and filing; format**

14
15 A party that intends to use the deposition transcript of the testimony of a
16 witness who is reasonably expected to be unavailable for trial, must serve a
17 copy of the portion of the transcript that it intends to introduce at trial on all
18 other parties at least 5 court days before the trial management conference or,
19 if no trial management conference is held, at least 5 court days before the
20 date set for trial. The portions of the transcript must be formatted in
21 accordance with rule 3.1116.

22
23 **(b) Objections or counter-designations; format**

24
25 Objections to the use at trial of a deposition transcript served under (a), and
26 the portions of any deposition transcripts that are being counter-designated,
27 must be served on all parties no later than the date of the trial management
28 conference or, if there is no trial management conference, the date set for
29 trial. The portions of any deposition transcripts that are counter-designated
30 must be formatted in accordance with rule 3.1116.

31
32 **(c) Filing with the court**

33
34 A party offering a deposition transcript under (a) must submit a copy of the
35 portion of the transcript that it intends to introduce at trial, and any objecting
36 party must file its objections and submit the portions of any transcripts that it
37 is counter-designating under (b), to the court no later than the trial
38 management conference or, if no trial management conference is held, on the
39 date set for trial.

40
41 **(d) Originals to be lodged**

1 A party that intends to use the deposition transcript at trial of any witness
2 who is reasonably expected to be unavailable at trial must lodge the original
3 deposition transcript with the courtroom clerk no later than the date set for
4 trial.

5
6 **(e) Court approval of exceptions**

7
8 When the proponent of the use of a deposition transcript under this rule
9 could not reasonably have anticipated the need for the use of the transcript at
10 trial, the court may permit the use of the transcript at trial in the interests of
11 justice, under such conditions as may be appropriate.

12
13 **Rule 3.1416. Video or audio presentations**

14
15 **(a) Transcript to be served and filed**

16
17 Any party that intends to present at trial any audio, video, DVD, CD, or other
18 similar recorded materials containing a sound recording, except those to be
19 used solely for impeachment or rebuttal, must prepare a written transcript of
20 the presentation, serve it on all parties, and file it with the court, along with
21 the audio, video, DVD, CD, or other similar recorded materials no later than
22 the date set for trial. The transcript must be marked and filed as required
23 under rule 2.1040.

24
25 **(b) Court approval of exceptions**

26
27 When the proponent of an audio, video, DVD, CD, or other similar recorded
28 materials containing sound recording could not reasonably have anticipated
29 the need for the use of the recorded materials at trial, the court may permit
30 the use of the recorded materials at trial in the interests of justice even
31 though no transcript was timely served and filed under (a), under such
32 conditions as may be appropriate.

33
34 **Rule 3.1418. Statement of the case to be read to the jury**

35
36 In a jury trial, the parties must prepare a brief, nonargumentative, joint statement
37 of the facts of the case to be read by the judge to the jury at the beginning of the
38 case, unless the court permits brief opening statements by counsel to be presented
39 to the jury under rule 2.1034.

40
41 **Rule 3.1420. Trial briefs**

1 Each party may serve and file a trial brief. Also, the court may order parties to file
2 trial briefs. Any such briefs must be served and filed as provided under rule
3 3.1406(b).

4
5 **Rule 3.1422. Jury instructions**

6
7 **(a) Service and filing of proposed jury instructions**

8
9 On the date set for trial, each party must serve on all other parties and file
10 with the court a full set of all proposed introductory instructions,
11 preinstructions, and jury instructions, following the form and format of
12 proposed instructions specified in rule 2.1055.

13
14 **(b) Meet-and-confer; preparation of instructions and verdict form**

15
16 The court may order the parties to meet and confer, including in person, if
17 necessary, to prepare:

18
19 (1) A set of joint introductory instructions, preinstructions, and special jury
20 instructions, or, in the event of any disagreement, separate sets of such
21 instructions or preinstructions; and

22
23 (2) A joint verdict form; or, in the event of disagreement, separate verdict
24 forms.

Item SPR08-29 Response Form

Title: **Civil Pretrial Rules** (amend Cal. Rules of Court, rules 3.250, 3.727, 3.728, and 3.112; adopt rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1412, 3.1416, 3.1418, 3.1420, and 3.1422)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. 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.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: 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

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*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.*