

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR11-24

Title	Action Requested
Civil Trials: Proposed Consent Order for Expedited Jury Trials	Review and submit comments by June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms EJT-020 and EJT 020A	January 1, 2012
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	Anne Ronan Office of the General Counsel 415-865-8933 phone anne.ronan@jud.ca.gov

Summary

The recently enacted Expedited Jury Trial Act (Assem. Bill 2284 [Evans]; Stats. 2010, ch. 674) (AB 2284) provides procedures by which parties may agree to take part in an alternative streamlined method for handling civil actions to promote the speedy and economical resolution of cases and conserve judicial resources. This proposal is for two optional forms that parties may use to memorialize their agreement to take part in an expedited jury trial and to present that agreement to the court: *[Proposed] Consent Order for Expedited Jury Trial* (form EJT-020), which includes all the elements that the statute mandates be in such an agreement, and *Attachment to [Proposed] Consent Order for Expedited Jury Trial* (form EJT-020A), which includes a checklist of other items relating to an expedited jury trial on which the parties may agree.

Discussion

[Proposed] Consent Order for Expedited Jury Trial (form EJT-020)

Participation in an expedited jury trial is entirely voluntary. The procedures are initiated at the court when the agreement of the parties is submitted to the court in the form of a proposed consent order granting an expedited jury trial that (1) is signed by the parties and their counsel and (2) includes representations that the parties and their insurers have been informed of the applicable rules and procedures and been given the Judicial Council information sheet on

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

expedited jury trials, and that the parties agree to the procedures and the insurers do not object to them. (Code Civ. Proc. § 630.03(a), (e).)¹

The proposed consent order must contain representations about the informed consent of the parties and their insurance carriers and the parties' agreement that (1) they generally waive their rights to appeal and to make posttrial 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 in the statute; and (5) pretrial and trial matters will proceed under the rules set forth in the act unless the parties expressly agree otherwise. (§ 630.03(e).)

The proposed forms were developed to assist the parties in preparing the required proposed consent order setting forth the agreements between the parties to take part in an expedited jury trial. The forms are proposed for approval as optional forms.

The form for the proposed consent order includes all the elements required by statute. The form is designed as a single form to be signed by all the parties. The form begins with a box containing instructions to that effect—that it is to be signed by all parties—and instructions that the parties should, before completing the form, review the *Expedited Jury Trial Information Sheet* (form EJT-010-INFO).

Item 1 contains the identity of the parties.

Item 2 has check boxes for each party (plaintiff and defendant) to check to assert that he or she is represented by an attorney who has advised the party about the expedited jury trial procedures and provided them with the required information sheet. There is an alternative box for a self-represented litigant to check. The final boxes in item 2 are to identify insurance companies responsible for providing coverage or defense for a party, and to state that they too have been informed of the procedures, provided with the information sheet, and do not object to the procedure. This language is taken directly from the statute. (See § 630.03(e)(1).)

Item 3 contains the statutorily mandated agreements to a general waiver of appeal rights, a shorter trial, a smaller jury, and only three peremptory challenges per side. It also includes the parties' agreement that the case will proceed under the Expedited Jury Trial Act and the rules of court concerning expedited jury trials unless the parties stipulate otherwise within the agreement set out in the proposed consent order. (See § 630.03(e)(2).)

Except for the statutorily mandated elements listed above, the parties may agree to modify the rules and procedures that will apply to their particular trial. Any such agreements must be stated in the proposed consent order and can include agreements about modifications of the timelines for pretrial submissions, limitations on the number of witnesses per party, modifications of rules and statutory provisions regarding exchange of expert witness information and presentation of

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

testimony by expert witnesses, and any other evidentiary matters agreed to by the parties. (See rule 3.1547(b).) Item 5 of the proposed consent order states that the parties understand that any such optional agreement must be included in the proposed consent order, either in item 8 or on the attachment form (form EJT-020A).

Item 6 references the possibility of high-low agreements. This is not a place for the parties to indicate whether such an agreement exists (such information need not be presented to the court in most cases),² but is included as a reminder that such agreements are possible in expedited jury trial cases.

Item 7 states the parties understand that any award for attorney's fees or costs is to be decided by the court. This is to remind the parties that such an award is possible in an expedited jury trial, just as in any civil action.

The parties are to indicate in item 9 how many other pages, if any, are attached. Item 9 also includes a statement that the parties agree to the content of those attached pages.

Signature lines are provided for each party, as required by statute, and for the attorneys for each party. A signature line is included for a judicial officer to approve the consent order.

Attachment to [Proposed] Consent Order for Expedited Jury Trial (form EJT-020)

An attachment form has been developed for use by the parties to describe any optional agreements that they have reached to modify the rules and procedures that will apply to their particular expedited jury trial. The form has a two-fold purpose. First, it is intended as an aid for memorializing the terms of agreements reached between the parties so that these agreements may be included in the proposed consent order. Second, it is intended to serve as a checklist to remind the parties and their counsel of the various topics they should be exploring as possible ways to streamline the trial. The attachment form contains an item for each of the subjects listed in rule 3.1547(b) as possible areas in which the parties may wish to include an agreement in the consent order. There is also a blank item for any other topic the parties agree on, as well as a space to indicate whether additional sheets are attached containing other agreements or to provide more detail as to the terms of the agreements identified in form EJT-020A.

² Only in cases involving minors or dependent adults or in cases brought by self-represented litigants is a court to review any high-low agreement.

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;">03.28.11</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 under California Code of Civil Procedure sections 630.01-630.12 and rules 3.1545-3.1552 of the California Rules of Court. 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 rules 3.1545-3.1552 of the California Rules of Court .
 - 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 Code of Civil Procedure 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 Code of Civil Procedure 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 of the California Rules of Court (*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 3.1550 of the California Rules of Court, 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 that fewer than eight jurors may 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*):

Item SPR11-24 Response Form

Title: Civil Trials: Proposed Consent Order for Expedited Jury Trials (approve forms EJT-020 and EJT-020A)

- 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 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: www.courts.ca.gov/policyadmin-invitationstocomment.htm

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., Monday, June 20, 2011

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.