



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Effective Date
Jury Trials: Expedited Jury Trial Procedures	January 1, 2011
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rules of Court, rules 3.1545– 3.1552, and <i>Expedited Jury Trial Information Sheet</i> (form EJT-010)	October 8, 2010
Recommended by	Contact
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Agenda Item Type	
Action Required	

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt new rules and a new form to implement the provisions of the Expedited Jury Trial Act (Assem. Bill 2284 [Evans]; Stats. 2010, ch. 674) The act, enacted on September 30, 2010 and operative on January 1, 2011, 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 to conserve judicial resources. The proposed rules will establish uniform but flexible procedures for litigating under the act while also providing that the scheduling and assignment of proceedings is left to each superior court.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2011, adopt the following rules to set forth procedures for expedited jury trials:

1. Adopt rule 3.1545 to provide that the rules in new chapter 4.5 apply to civil actions proceeding under the Expedited Jury Trial Act and definitions of key terms;
2. Adopt rule 3.1546 to provide that the assignment of judicial officers for expedited jury trials is at the discretion of the presiding judge and to preclude the assignment of temporary judges requested by the parties under rules 2.830–2.835;
3. Adopt rule 3.1547 to:
 - Require that the parties agreeing to an expedited jury trial submit proposed consent orders to the court at least 30 days before a scheduled trial date;
 - Limit when a high/low agreement between the parties may be submitted to the court; and
 - Allow certain agreements concerning trial procedures and evidentiary issues to be included in the proposed consent order.
4. Adopt rule 3.1548 to provide for pretrial exchanges between the parties, advance filing of motions in limine, and a pretrial conference;
5. Adopt rule 3.1549 to limit the time for voir dire to 15 minutes for the judge and 15 minutes for each side;
6. Adopt rule 3.1550 to limit the time for presentation of the case to three hours per side, including time spent on cross-examination;
7. Adopt rule 3.1551 to permit alternative methods of presentation of the case to the jury as long as the parties and the judicial officer have not approved them at the pretrial conference;
8. Adopt rule 3.1552 to require that any agreement to modify the applicable evidentiary rules be included in the proposed consent order and that any objections be made in a timely manner; and
9. Adopt *Expedited Jury Trial Information Sheet* (form EJT-010-INFO), a summary of the laws and procedures applicable to expedited jury trials for parties contemplating taking part in such a trial.

The proposed rules are attached at pages 14–19. A copy of the proposed form is attached at pages 20–21.

Previous Council Action

For several years groups in the legal community have been discussing ways to make the litigation of civil cases with smaller amounts in controversy more efficient. In light of those discussions and given the state’s current economic circumstances, a Small Civil Cases Working Group was formed at the request of the Chief Justice and the Administrative Director of the Courts. It consists of members of the Civil and Small Claims Advisory Committee and members of the plaintiff and defense bars, as well as liaisons from the insurance industry, business groups, and a consumer organization.¹ The group’s charge included consideration of innovative program models, including, but not limited to, summary jury trial programs,² which could be implemented in California to enhance settlements and promote more effective and efficient administration of civil cases. The working group developed a proposal for new rules of court establishing expedited jury trial procedures and presented the proposal to the Civil and Small Claims Advisory Committee. At that committee’s recommendation, the Rules and Projects Committee of the Judicial Council approved the circulation of the proposed rules for public comment in spring 2010.

While the proposal was out for comment, Assembly Bill 2284, which was originally introduced to provide a general legislative authorization for developing rules governing an expedited jury trial program, was amended to include the key elements from the rules proposal, codifying them in statute to establish the Expedited Jury Trials Act. Although the version of the expedited jury trials proposal circulated for public comment was drafted as a rules proposal, the Judicial Council, acting through its Policy Coordination and Liaison Committee, voted to support AB 2284, which paralleled the rules proposal.³ This proposal includes the rules from the original proposal that were not included in AB 2284.

¹ The Small Civil Cases Working Group is chaired by Judge Mary Thornton House (Superior Court of Los Angeles County) and includes the following members of the Civil and Small Claims Advisory Committee: Judge Larry W. Allen, Mr. Albert Y. Balingit, Judge Kevin Clement Brazile, Ms. Jacqueline Davenport; Ms. Virginia Davidow; Commissioner Michele E. Flurer, Ms. Janet de Laive, Mr. Paul Kiesel, Mr. Jay Sacks, Commissioner L. Thomas Surh, and Mr. William T. Tanner. The members of the working group also include Judge Stephen M. Moloney (Superior Court of Los Angeles County), Commissioner Douglas G. Carnahan, (retired, Superior Court of Los Angeles County), and attorneys Mr. Mark S. Adams, Mr. Paul Bigley, Mr. Christopher Dolan, Mr. Steven P. Goldberg, and Mr. Craig Sheffer. The following individuals have participated as liaisons to the working group: Mr. Michael Belote (California Defense Counsel), Mr. Saul Bercovitch (State Bar of California), Ms. Nancy Drabble (Consumer Attorneys of California), and Ms. Barbara Gaal (California Law Revision Commission). Representatives from key stakeholder groups include: Ms. Erika Frank and Ms. Mira Guertin (California Chamber of Commerce), Ms. Kimberly Dellinger (Personal Insurance Federation of California), Mr. Jeffrey Fuller (Association of California Insurance Companies), Ms. Gail Hillebrand (Consumers Union), Ms. Kimberly Stone (Civil Justice Association of California), and Mr. Steve Suchil (American Insurance Association).

² Such programs have been successful in New York, South Carolina, and several other states.

³ A copy of AB 2284 follows this report as Attachment A, at pages 61–66.

Rationale for Recommendation

The expedited jury trial proposal was developed to address litigants' lack of access to the courts in smaller civil cases and the high expense of going to trial under current laws and procedures. The expedited jury trial procedures, now split between AB 2284 and the proposed rules of court recommended for adoption, establish 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, and the goal is to complete the trial in one day. Participation is voluntary. The decision of the jury is binding on the parties, and appeals and posttrial 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 scheduling of expedited jury trials and the assignment of judicial officers will be left to each superior court.

The rising costs of litigation present a significant barrier in achieving access to the courts. For some litigants, especially those with claims involving relatively small amounts in dispute, established forms of alternative dispute resolution have not proven successful in resolving their cases prior to trial. Traditional trials can be time consuming and expensive for both litigants and the courts. The expedited jury trial program will provide an innovative method of enhancing access to the courts by significantly reducing the costs of trials. Participation in an expedited jury trial is attractive to the parties because they can determine many of the procedures to be used, tailoring them to the issues at hand. Parties are encouraged to enter into agreements that streamline the method of presenting evidence and other procedures designed to have the case concluded within one trial day. Smaller juries will also yield significant savings to courts and litigants.

A key feature of the model that works to the advantage of all parties is the ability of parties to enter into high/low agreements. The 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 cases to juries. The binding and final nature of the jury verdict will also achieve finality more swiftly and reduce costs to litigants and the courts by foreclosing appeals and posttrial motions in most cases.

Summary of statutory provisions in AB 2284

The Expedited Jury Trials Act contains the following provisions:

Applicable procedures and rules. The procedures in the Expedited Jury Trials Act (Code Civ. Proc., §§ 630.01–630.10⁴) and the implementing rules adopted by the Judicial Council will govern an expedited jury trial unless the parties agree otherwise, as specifically permitted under the statute, and the court agrees with the modifications. (§ 630.02(a).) Any matters not expressly addressed either by the expedited jury trial statutes or rules or in the consent order for such a trial will be governed by the applicable statutes and rules governing civil actions. (§ 630.02(b).)

Consent of parties. Participation in an expedited jury trial is entirely voluntary. The consent of the parties will be submitted to the court in the form of a proposed consent order (1) granting an expedited jury trial that is signed by the parties and their counsel and (2) including representations that the parties and their insurers have been informed of the applicable rules and procedures and given the Judicial Council information sheet regarding expedited jury trials. (§ 630.03(a), (e).) An agreement to participate in an expedited jury trial will remain 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. (§ 630.03(b).)

For an expedited jury trial involving either (1) a self represented litigant or (2) a minor, an incompetent person, or a person for whom a conservator has been appointed, the court would also have to approve in advance of the trial, the use of an expedited jury trial and any high/low agreements or other stipulation. (§ 630.03(d).)

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 section 630.01(b). A high/low agreement may not be disclosed to the jury at any time. (§ 630.01(b).) Disclosure to the court is governed by the new rules and is permitted only in cases involving a minor, an incompetent person, or a person for whom a conservator has been appointed or if disclosure is necessary for the entry or enforcement of the judgment. (See proposed rule 3.1547(a)(2).)

Proposed consent orders. The proposed consent order must contain representations concerning the informed consent of the parties and their insurance carriers and must include 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; 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 court may not unilaterally alter the proposed consent order but may deny the order in its entirety if it finds good cause why the case should not be handled as an expedited jury trial. (§ 630.03(f).)

⁴ Unless otherwise indicated, all statutory references are to the Code of Civil Procedure provisions in AB 2284, which will become operative on January 1, 2011.

Jury size and selection. Juries will be composed of eight jurors, unless the parties have agreed to fewer, with no alternates. (§ 630.04(a).) Each side will be allowed up to three peremptory challenges, with the possibility that one additional challenge may be granted to each side in multiple party cases, as is done in traditional civil jury trials under Code of Civil Procedure section 231(c). (§ 630.04(b).)

Applicable rules of evidence. Traditional rules of evidence apply in expedited jury trials unless the parties stipulate otherwise. (§ 630.06(a).) The proposed statute provides further 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. (§ 630.06(b).)

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. (§ 630.07(a).) A vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise. (§ 630.07(b).)

The statute provides that the time limits in an expedited jury trial are in no way intended to preclude a jury from deliberating as long as needed to reach a verdict. (§ 630.05.)

Posttrial motions and appeals. Parties to an expedited jury trial are required to waive any motions for directed verdicts or motions to set aside the verdict or any judgment rendered by the jury on the basis of inadequate or excessive damages. (§ 630.08.) Parties are also required to waive their rights to move for a new trial or 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. (§ 630.09.)

The only other posttrial motions that may be made by parties in an expedited jury trial are motions to correct a judgment for clerical error, motions to enforce a judgment, and motions for costs and attorney fees. (§ 630.09(c).) All statutes and rules governing costs and attorney fees apply in expedited jury trials unless the parties agree otherwise in the consent order. (§ 630.010.)

Sunset clause. The act contains a five-year sunset clause and will remain in effect until 2016, unless a later enacted statute extends its operation.

Proposed rules of court

The Expedited Jury Trial Act mandates that the council adopt rules and forms to establish uniform procedures implementing the provisions of the act, including rules on additional content of proposed consent orders; pretrial exchanges and submissions; pretrial conferences; time limits for jury selection; time limits for trial, including presentation of evidence and argument; and presentation of evidence and testimony. (§ 630.11.)

Assignment of judicial officers. Each superior court will have discretion over 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. (Proposed rule 3.1546.) 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 give each court maximum flexibility in deciding how to handle expedited jury trials. For example, a court could create a separate department for expedited jury trial cases, have such trial conducted by a previously assigned judge, or establish separate calendars. The proposed statute expressly precludes appointment of a private judge, i.e., any temporary judge not appointed by the court under rule 2.810 et seq., to conduct an expedited jury trial.

Proposed consent orders. 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. (Proposed rule 3.1547(a)(1).) Except for the statutorily mandated elements (see § 630.03(e)), 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 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 testimony by expert witnesses, and any other evidentiary matters agreed to by the parties. (Proposed rule 3.1547(b).)

Pretrial proceedings. 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 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 (proposed rule 3.1548(b)), provide for a supplemental exchange (proposed rule 3.1548(c)), and outline the issues to be addressed at the pretrial conference (proposed rule 3.1548(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. (Proposed rule 3.1548(e).)

Time limits on voir dire. Approximately one hour will be devoted to voir dire, with 15 minutes allowed for the judicial officer and 15 minutes for each side. (Proposed rule 3.1549.) 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. (Proposed rule 3.1550.) The parties are 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. (Proposed rules 3.1551, 3.1552.)

Proposed form

Expedited Jury Trial Information Sheet (form EJT-010-INFO) has been developed to provide parties with information about the expedited jury trial process. To ensure that parties are fully informed about any rights they are waiving in the process, AB 2284 requires that all parties (and their insurers) be provided with the information sheet before agreeing to an expedited jury trial. (§ 630.03(e)(1).)

Comments, Alternatives Considered, and Policy Implications

The expedited jury trial proposal, in the originally proposed all-rules format, was circulated for comment during the spring 2010 comment cycle. Twenty-one comments were received from the following commentators:

- Association of California Insurance Companies;
- California Chamber of Commerce;
- California Defense Counsel;
- California Judges Association;
- Civil Justice Association of California;
- Consumer Attorneys of California;
- Orange County Bar Association;
- Santa Clara County Bar Association;
- State Bar of California, Litigation Section, Rules and Legislation Committee;
- State Bar of California, Committee of Administration of Justice;
- Superior Court of Los Angeles County;
- Superior Court of San Diego County;
- Superior Court of Yolo County;
- Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Working Group;
- Two individual superior court judges; and
- Five individual attorneys.

Except for one individual attorney and the Santa Clara County Bar Association, the commentators either agreed with the proposal in full or agreed in general but requested a modification or clarification of some aspect of the proposal.⁵ The more substantive comments and the responses to the specific questions raised in the invitation to comment are summarized

⁵ A chart summarizing all the comments received and the committee's responses is attached at pages 22–60. Following the general comments, are comments grouped by specific rule number or topic. Where the proposed rule or topic is now covered by provisions in AB 2284, that is indicated in the section header, along with the specific code section number. Although those comments address provisions now in statute rather than in proposed rules, the committee considered them and provided responses. A discussion of those comments, which are not directly relevant to the proposed rules but had some effect on AB 2284, is set forth at Attachment B, at pages 67–68.

below, along with alternatives considered by the committee.

Assignment of judicial officers

The committee considered developing a more specific program that directed how expedited jury trials were to be handled in each court. There was discussion of providing that all expedited jury trials in a court be assigned to a dedicated department, for example, or that specific judges be assigned to such a program, as is done in New York's summary jury trial program. The committee concluded, however, particularly in light of the limited resources available to courts at the present time, that having each court determine how best to handle these trials made more sense. This built-in flexibility for court administration is included at proposed rule 3.1546. The invitation to comment sought specific comments regarding whether the rule provides sufficient clarity on this point. Both groups that expressly addressed this point, the State Bar's Committee on Administration of Justice (CAJ) and its Litigation Section's Rules and Legislation Committee (Litigation Section), agreed with the provision as proposed and concluded that it provided flexibility to the courts. None of the three courts that commented on the proposal objected to this provision.

The invitation to comment also asked for comments on the proposed rule precluding the appointment of temporary judges under rules 2.830–2.835, which regulate the appointment of attorneys whom the parties requested act as temporary judges and who have not met the requirements to be on court-appointed judge panels.⁶ A judge from the Superior Court of Orange County and part of the CAJ expressly agreed with the rule as written. Other members of the CAJ, along with the Litigation Section, the Association of California Insurance Companies, the Orange County Bar Association, and an individual attorney wanted to eliminate the prohibition on the appointment of attorneys not meeting the requirements to be on court-appointed panels, so long as the parties agreed to the appointment of the private judges. Another individual attorney commented that expedited jury trial judges should not be limited to sitting judicial officers but did not express a preference as to whether attorneys who did not meet the qualifications of rule 2.810 et seq. should be eligible for appointment. The California Judges Association's comment sought clarification that the prohibition in the rule did not apply to assigned judges.

The committee approved the recommended rule as circulated, precluding private judges from conducting expedited jury trials, concluding that having private judges make rulings and deal with juries from the facilities of the superior court, possibly without adequate training and experience, is not appropriate. The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment as temporary judges under rule 2.812 and have been appointed by the court to serve as temporary judges in that court. Moreover, the proposed rule does not prohibit the use of assigned judges for these trials. Retired judges in the Assigned Judges Program are appointed by the Chief Justice under the authority of

⁶ The proposed rule does not prohibit the appointment as temporary judges in expedited jury trials of those attorneys or retired judges who meet the requirements of the rules 2.810–2.819, Court-Appointed Temporary Judges. (Proposed rule 3.1546.)

the California Constitution and so are not subject to the rules concerning temporary judges. (Cal. Const., Art. VI, § 6(e).) Hence the rule provides flexibility for the courts while preserving both actual fairness and the perception of fairness in trials that use publicly summoned jurors and court facilities.

Termination of agreement to take part in expedited jury trial

Both the CAJ and Litigation Section sought modification of the provisions authorizing the termination of the consent order for an expedited jury trial. (See § 630.03(b), formerly 3.1547(a).) The Litigation Section proposed the addition of a “good cause” provision, requiring court approval of any withdrawal from the process, even when there is mutual agreement of the parties, and also wanted a time limit added for termination requests. The CAJ agreed that there should be a deadline, a time past which the stipulation of the parties would not be sufficient to end their participation in an expedited jury trial without court approval. The committee disagreed. The agreement of the parties is an essential element of the expedited jury trial program, which is entirely voluntary in nature. The committee concluded that if, at any point, *all* parties agreed that the case should not proceed as an expedited jury trial, removal of the case from the program should be permitted and the case returned to the regular trial calendar or case management system. The Legislature has adopted this approach (§ 630.03(b)), and no rule is being recommended to limit the timing of such action.

Pretrial exchanges and pretrial conference

Proposed rule 3.1548⁷ includes detailed provisions for a pretrial exchange of witness lists, exhibits, proposed jury instructions, and other items, and for a pretrial conference to address objections, motions in limine, and other matters. In the past the advisory committee has rejected a proposal for rules of court providing for such procedures in traditional civil trials and so considered not including the rule here. In addition, objection to the pretrial exchange was one ground for the Santa Clara County Bar Association’s disagreement with the proposal overall. The committee concluded, however, that the rule is appropriate in the expedited jury trial context. The committee reached this conclusion for two primary reasons.

First, the goal of the expedited jury trial is to have streamlined trials generally taking a single trial day. This can be accomplished only if much of the normal colloquy between the parties and judicial officer that traditionally takes place immediately before and during a jury trial takes place in advance. Under the proposed rules, the parties can more easily streamline their cases if they have witness lists and exhibits in hand three weeks before the trial. Objections to certain exhibits or witnesses, discussions regarding juror questionnaires and jury instructions, consideration of summaries or trial notebooks can be addressed before the jurors arrive for duty. After the pretrial exchanges and conference, the court and parties will be prepared to start with the jury immediately on the day the trial is scheduled.

⁷ This rule was circulated for comment as rule 3.1549.

Second, the expedited jury trial model is a flexible, purely voluntary process. Parties who do not want to take part in pretrial exchanges and pretrial conferences need not participate in expedited jury trials. Moreover, even within an expedited jury trial, the pretrial rule procedure is not mandatory and can be modified by agreement of the parties and approval of the court. The only provisions that the parties must agree to are (1) the waiver of rights to appeal and to make posttrial motions; (2) a smaller jury; (3) fewer peremptory challenges; and (4) three hours per side for presenting the case. All the other expedited jury trial and pretrial rules may be changed by agreement of the parties as long as the modifications are included in the proposed consent order submitted to the court. (See proposed rule 3.1547(b).)

Other comments on proposed procedures

The Superior Court of Los Angeles suggested that the language in proposed rule 3.1549,⁸ in which parties are “encouraged” to submit joint jury questionnaires, be changed on the grounds that encouraging certain procedures is an intrusion on judicial discretion and independence. The consensus of the committee was that, while mandating use of a jury questionnaire in all cases would not be appropriate, the questionnaire is a tool that may speed up voir dire and hence it is appropriate to encourage parties in expedited jury trials to submit an agreed upon questionnaire for consideration at the pretrial conference.

Various commentators proposed that the rules should limit the number of expert witnesses or require that their testimony be taken by video deposition only. The rules allow the parties to agree to such limitations but do not mandate it. The committee concluded that flexibility is preferable to strict requirements about how a case should be presented under the program.

Statewide application rather than pilot program

The Small Claims Working Group and the advisory committee initially considered recommending the expedited jury trial program as a pilot program, to be instituted in only a few courts across the state for the first few years to determine its usefulness in providing greater access to justice. But once the focus of the group turned to a purely voluntary program, rather than one mandated in cases within a certain jurisdictional limit, the group concluded that limiting the program to cases in particular courts was unnecessary. The committee agreed. Similarly, because of the flexibility provided to the courts in administering the program, there is no reason to recommend limiting the number of courts that can take part, particularly in light of the potential for the model to yield cost savings for both litigants and the courts.

The committee has considered this issue again in light of the objection from the Santa Clara Bar Association that a court should not have to take part in the program if it does not have backed-up civil calendars. The committee determined that implementing the program throughout the state is appropriate. Assistance with civil calendars is not the only goal of the program; it also provides for jury trials that are shorter and less expensive for both courts and litigants.

⁸ This rule was circulated as rule 3.1550(c).

The Legislature has adopted the approach recommended by the committee, with no limitations on where the expedited jury trial procedures may be used.

Limitations by case size

Some commentators proposed limitations on the sizes of cases that may be tried through the expedited jury trial process. One understood it to apply only to limited civil cases, while another wanted to preclude cases with claims for punitive damages. The primary focus of the Small Civil Cases Working Group is dealing with smaller civil cases. While “smaller” is defined differently by different individuals, the group decided early in its deliberations that there was no reason to limit expedited jury trials to cases under certain monetary limits. The advisory committee agrees.

The point of the model is to have a quick trial. While this means that the issues that can be addressed must be limited in scope, it does not mean that they have to be limited in monetary value. Parties in an auto accident case in which the parties have essentially agreed that high damage amounts exist but dispute liability may be well able to present the liability issue to a jury in a few hours. On the other hand, a malpractice case involving multiple defendants and disputed damages may require many days to try, even if only \$50,000 is claimed in damages. The committee concluded that it would not propose monetary limits on the cases that could use the expedited jury trial process but would instead leave it to the parties and court to agree that a certain case could meet the one-day goal. The nature of the program, requiring that all the parties agree that each side needs only three hours to present its case, should self-select for the relatively simpler cases.

This issue has now been resolved by AB 2284, which places no limitation on the size of cases that may proceed in an expedited jury trial.

Implementation Requirements, Costs, and Operational Impacts

Although a detailed fiscal analysis of the proposed rules has not been conducted, information from New York, South Carolina, and other states that have implemented some form of summary jury trial or short trial programs suggests that both litigants and the courts will see significant cost savings result from adoption of an expedited jury trial program.

The proposal, as circulated, was reviewed by the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Working Group for evaluation of operational impacts on the courts. The Joint Rules Working Group approved of the proposal overall, noting that the program may provide cost savings to courts, especially larger courts, in the long run, given that the streamlined process would require a smaller jury panel. The group noted that the proposal might necessitate the development of a new case category/type in computerized case management systems, the development of local rules regarding how expedited jury trial programs will be handled in some courts, and some limited training for judicial officers and court staff.

Relevant Strategic Plan Goals and Operational Plan Objectives

The adoption of rules setting forth statewide procedures implementing the Expedited Jury Trial Act has been mandated by the Legislature. In addition, the proposed rules further the goal of modernizing case management and administration through statewide rules that promote the efficient processing of civil cases (Goal III, objective 5).

Attachments

1. Cal. Rules of Court, rules 3.1545–3.1552, at pages 14–19
2. Form EJT-010-INFO, at pages 20–21
3. Chart of comments, at pages 22–60
4. Attachment A: AB 2284, at pages 61–66
5. Attachment B: Discussion of comments on statutory provisions, at pages 67–68

Rules 3.1545–3.1552 of the California Rules of Court are adopted, effective January 1, 2011, to read:

1 **Chapter 4.5. Expedited Jury Trials**

2
3 **Rule 3.1545. Expedited Jury Trials**

4
5 **(a) Application**

6
7 The rules in this chapter apply to civil actions in which the parties agree to an expedited jury
8 trial under chapter 4.5 (commencing with section 630.01) of title 8 of part 2 of the Code of
9 Civil Procedure.

10
11 **(b) Definitions**

12
13 As used in this chapter, unless the context or subject matter otherwise requires:

14
15 (1) “Consent order” means the consent order granting an expedited jury trial described in
16 Code of Civil Procedure section 630.03.

17
18 (2) “Expedited jury trial,” “high/low agreement,” and “posttrial motions” have the same
19 meanings as stated in Code of Civil Procedure section 630.01.

20
21 **(c) Other programs**

22
23 This chapter does not limit the adoption or use of other expedited trial or alternative dispute
24 resolution programs or procedures.

25
26 **Rule 3.1546. Assignment of judicial officers**

27
28 The presiding judge is responsible for the assignment of a judicial officer to conduct an
29 expedited jury trial. The presiding judge may assign a temporary judge appointed by the court
30 under rules 2.810 – 2.819 to conduct an expedited jury trial. A temporary judge requested by the
31 parties under rules 2.830 – 2.835, whether or not privately compensated, may not be appointed to
32 conduct an expedited jury trial.

33
34 **Rule 3.1547. Consent Order**

35
36 **(a) Submitting proposed consent order to the court**

1 (1) Unless the court otherwise allows, to be eligible to participate in an expedited jury trial,
2 the parties must submit to the court, no later than 30 days before any assigned trial date, a
3 proposed consent order granting an expedited jury trial.

4
5 (2) The parties may enter into written stipulations regarding any high/low agreements or
6 other matters. Only in the following circumstances may a high/low agreement be
7 submitted to the court with the proposed consent order or disclosed later in the action:

8
9 (A) Upon agreement of the parties;

10
11 (B) In any case involving either

12
13 (i) A self-represented litigant, or

14
15 (ii) A minor, an incompetent person, or a person for whom a conservator has been
16 appointed; or

17
18 (C) If necessary for entry or enforcement of the judgment.

19
20 **(b) Optional content of proposed consent order**

21
22 In addition to complying with the provisions of Code of Civil Procedure section 630.03(e),
23 the proposed consent order may include other agreements of the parties, including the
24 following:

25
26 (1) Modifications of the timelines for pretrial submissions required by rule 3.1548;

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 3.1550, including how arguments and cross-
34 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 admissions
37 regarding factual matters;

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

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

1
2 (8) Agreements about admissibility of video or written depositions and declarations;

3
4 (9) Agreements about any other evidentiary issues or the application of any of the rules of
5 evidence;

6
7 (10) Agreements to use photographs, diagrams, slides, electronic presentations, overhead
8 projections, notebooks of exhibits, or other methods for presenting information to the
9 jury;

10
11 (11) Agreements concerning the time frame for filing and serving motions in limine; and

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

15
16 **Rule 3.1548. Pretrial submissions**

17
18 **(a) Service**

19
20 Service under this rule must be by a means consistent with Code of Civil Procedure sections
21 1010.6, 1011, 1012, and 1013 or rule 2.251 and be reasonably calculated to assure delivery to
22 the other party or parties no later than the close of business on the last allowable day for
23 service as specified below.

24
25 **(b) Pretrial exchange**

26
27 No later than 25 days before trial, each party must serve on all other parties the following:

28
29 (1) Copies of any documentary evidence that the party intends to introduce at trial (except for
30 documentary evidence to be used solely for impeachment or rebuttal), including, but not
31 limited to, medical bills, medical records, and lost income records;

32
33 (2) A list of all witnesses whom the party intends to call at trial, except for witnesses to be
34 used solely for impeachment or rebuttal, and designation of whether the testimony will be
35 in person, by video, or by deposition transcript;

36
37 (3) A list of depositions that the party intends to use at trial, except for depositions to be used
38 solely for impeachment or rebuttal;

39
40 (4) A copy of any audiotapes, videotapes, digital video discs (DVDs), compact discs (CDs),
41 or other similar recorded materials that the party intends to use at trial for evidentiary
42 purposes, except recorded materials to be used solely for impeachment or rebuttal and
43 recorded material intended to be used solely in closing argument;

1
2 (5) A copy of any proposed jury questionnaires (parties are encouraged to agree in advance
3 on a questionnaire);

4
5 (6) A list of proposed approved introductory instructions, preinstructions, and instructions to
6 be read by the judge to the jury;

7 (7) A copy of any proposed special jury instructions in the form and format described in rule
8 2.1055;

9
10 (8) Any proposed verdict forms;

11
12 (9) A special glossary, if the case involves technical or unusual vocabulary; and

13
14 (10) Motions in limine.

15
16 **(c) Supplemental exchange**

17
18 No later than 20 days before trial, a party may serve on any other party any additional
19 documentary evidence and a list of any additional witnesses whom the party intends to use at
20 trial in light of the exchange of information under subdivision (b).

21
22 **(d) Submissions to court**

23
24 No later than 20 days before trial, each party must file all motions in limine and must lodge
25 with the court any items served under (b)(2)–(9) and (c).

26
27 **(e) Preclusionary effect**

28
29 Unless good cause is shown for any omission, failure to serve documentary evidence as
30 required under this rule will be grounds for preclusion of the evidence at the time of trial.

31
32 **(f) Pretrial conference**

33
34 No later than 15 days before trial, unless that period is modified by the consent order, the
35 judicial officer assigned to the case must conduct a pretrial conference, at which time
36 objections to any documentary evidence previously submitted will be ruled on. If there are no
37 objections at that time, counsel must stipulate in writing to the admissibility of the evidence.
38 Matters to be addressed at the pretrial conference, in addition to the evidentiary objections,
39 include the following:

40
41 (1) Any evidentiary matters agreed to by the parties, including any stipulations or admissions
42 regarding factual matters;

1 (2) Any agreement of the parties regarding limitations on necessary or relevant evidence,
2 including any limitations on expert witness testimony;

3
4 (3) Any agreements of the parties to use photographs, diagrams, slides, electronic
5 presentations, overhead projections, notebooks of exhibits, or other methods of
6 presenting information to the jury;

7 (4) Admissibility of any exhibits or demonstrative evidence without legally required
8 authentication or foundation;

9
10 (5) Admissibility of video or written depositions and declarations and objections to any
11 portions of them;

12
13 (6) Objections to and admissibility of any recorded materials that a party has designated for
14 use at trial;

15
16 (7) Jury questionnaires;

17
18 (8) Jury instructions;

19
20 (9) Special verdict forms;

21
22 (10) Allocation of time for each party's case; and

23
24 (11) Motions in limine filed before the pretrial conference.

25
26 **(g) Expert witness documents**

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

30
31 **Rule 3.1549. Voir Dire**

32
33 Approximately one hour will be devoted to voir dire, with 15 minutes allotted to the judicial
34 officer and 15 minutes to each side. Parties are encouraged to submit a joint form questionnaire
35 to be used with prospective jurors to help expedite the voir dire process.

36
37 **Rule 3.1550. Time limits**

38
39 Excluding jury selection, each side will be allowed three hours to present its case, including
40 opening statements and closing arguments, unless the court, upon a finding of good cause, allows
41 additional time. The amount of time allotted for each side includes the time that the side spends
42 on cross-examination. The parties are encouraged to streamline the trial process by limiting the
43 number of live witnesses. The goal is to complete an expedited jury trial within one full trial day.

1
2 **Rule 3.1551. Case presentation**

3
4 **(a) Methods of presentation**

5
6 Upon agreement of the parties and with the approval of the judicial officer, the parties may
7 present summaries and may use photographs, diagrams, slides, electronic presentations,
8 overhead projections, individual notebooks of exhibits for submission to the jurors, or other
9 innovative methods of presentation approved at the pretrial conference.

10
11 **(b) Exchange of items**

12
13 Anything to be submitted to the jury as part of the evidentiary presentation of the case in
14 chief must be exchanged 20 days in advance of the trial, unless that period is modified by the
15 consent order. This rule does not apply to items to be used solely for closing argument.

16
17 **(c) Stipulations regarding facts**

18
19 The parties should stipulate to factual and evidentiary matters to the greatest extent possible.

20
21 **Rule 3.1552. Presentation of evidence**

22
23 **(a) Stipulations regarding rules of evidence**

24
25 The parties may offer such evidence as is relevant and material to the dispute. An agreement
26 to modify the rules of evidence for the trial made pursuant to the expedited jury trial statutes
27 commencing with Code of Civil Procedure section 630.01 may be included in the consent
28 order. To the extent feasible, the parties should stipulate to modes and methods of
29 presentation that will expedite the process, either in the consent order or at the pretrial
30 conference.

31
32 **(b) Objections**

33
34 Objections to evidence and motions to exclude evidence must be submitted in a timely
35 manner. Except as provided in rule 3.1548(f), failure to raise an objection before trial does
36 not preclude making an objection or motion to exclude at trial.

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 this type of trial 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 only gives 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 about 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 down the costs of litigation, there are no appeals following an expedited jury trial except in very limited circumstances. These are explained more fully in 5.

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 temporary judge (a court commissioner or 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 on the 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, the jury's decision that one or more defendants will pay money to the plaintiff or 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 that 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?

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; or
- Corruption or fraud or some other bad act 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 several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. 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, and 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**).

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, 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 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 law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.12 and in rules 3.1545–3.1552 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at www.leginfo.ca.gov/calaw.html. The rules are at www.courts.ca.gov/rules.

SPR10-16

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

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
1.	Association of California Insurance Companies (ACIC) Jeffrey J. Fuller, Vice President and General Counsel Sacramento	AM	<p>These comments are submitted on behalf of the Association of California Companies (ACIC) which represents more than 300 property/casualty insurance companies doing business in California. ACIC member companies write 40.5% of the property/casualty insurance in California, including 50.8% of personal auto insurance, 48.3% of commercial automobile insurance, 33.2% of homeowners insurance, 22.7% of commercial multiperil insurance and 33.4% of the private workers’ compensation insurance. ACIC is an affiliate of the Property Casualty Insurers Association of America.</p> <p>As a participant in the Small Civil Cases Working Group, capably chaired by the Hon. Mary Thornton House, ACIC appreciates the effort of those involved to develop this proposal to establish an “Expedited Jury Trial” (EJT) procedure in California. ACIC supports establishing such a voluntary procedure in California because the EJT process – fairly and widely implemented – has the potential to reduce litigation costs for litigants and courts alike while preserving the essential characteristics of jury trials.</p> <p>(A) Insurers are concerned that there will arise circumstances in which an insured disagrees with an insurer’s decision not to</p>	<p>The committee notes commentator’s general agreement with the proposal.</p> <p>(A) This proposal is not intended to change the relationship between insurers and their insured. To the extent this comment seeks a substantive</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

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		<p>participate in the EJT process where there is a possibility that a judgment against the insured could exceed policy limits. The resulting personal liability for the insured – arguably an indirect result of the insurer declining to participate in the EJT process – could result in an action against the insurer for breach of the covenant of good faith and fair dealing. Perhaps a provision could be added to the rules stating that no party shall incur liability based on its decision to either participate or not participate in an EJT proceeding where that party has a genuine dispute as to its liability.</p> <p>(B) Consideration should be given to excluding actions involving claims for punitive damages from eligibility for the EJT process unless the exclusion is waived by the defendant.</p> <p>(C) Provision should be made (not necessarily in the rules themselves) for gathering data and having the Administrative Office of the Courts prepare a report about EJT as implemented in order to develop</p>	<p>change in the law, it is outside the scope of this proposal and beyond the scope of the committee’s work.</p> <p>(B) The expedited jury trial legislation (AB 2284) does not exclude claims for punitive damages. After much consideration, the committee decided not to categorize by rule or statute the type of cases that could be litigated in an expedited jury trial, limiting the cases only to those which may be tried within a day and which the parties agree to try under the expedited jury trial procedures. The existence of claims for punitive damages is one of many factors parties will take into consideration when deciding whether to use these expedited procedures.</p> <p>(C) The committee concludes that such a provision need not be in the rules, but agrees that gathering data on the program should be pursued.</p>	

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			<p>recommendations for changes that could expand the use and strengthen the benefits of the procedure.</p> <p>[See more comments on specific provisions below]</p>	
2.	Bruce M. Brusavich Attorney Agnew Brusavich Torrance	AM	[See comments on specific provisions below.]	See response to specific provisions below.
3.	California Chamber of Commerce by Mira Guertin, Policy Advocate Sacramento	A	<p>On behalf of the California Chamber of Commerce, I am pleased to express our support for the proposed changes to allow expedited jury trials in California. These voluntary, binding, abbreviated trials will allow the individuals and organizations in California to resolve disputes efficiently and effectively, without sacrificing fairness.</p> <p>Expedited jury trials will benefit both parties in litigation through time and cost savings, yet will allow them the flexibility to alter the rules to fit the circumstances of each case. In addition, availability of these proceedings will help conserve the state’s limited judicial resources, thereby enabling the state to focus resources on other programs that benefit all Californians.</p> <p>The California Chamber of Commerce represents thousands of employers within the state, from small mom and pop stores all the way to large multinational corporations.</p>	No response required.

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			<p>Regardless of their size, all our members are concerned with the state’s legal climate, the the time and cost associated with resolving even the smallest disputes, and the ever-increasing threat of litigation. The U.S. Chamber's <i>2009 State Liability Systems Ranking Study</i> also ranked California's legal system 46th worst out of the 50 states for fairness and reasonableness. We believe that the creation of an expedited jury trial procedure will help improve the state’s legal climate, which will, in turn, help encourage companies to expand and invest here.</p> <p>The process for developing the expedited jury trial rules has been collaborative and consensus driven throughout and the California Chamber of Commerce was among the many stakeholders consulted by the Office of Governmental Affairs. We believe the rules will effect a meaningful change to the way many individuals and organizations resolve disputes in California in the years to come.</p> <p>For these reasons and more, we agree with the proposed changes to allow expedited jury trials.</p>	
4.	California Defense Counsel by Michael Belote, Lobbyist Sacramento	A	The California Defense Counsel (CDC) strongly supports the contents of SPR10-16, relating to rules of expedited jury trials. CDC participated in the working group on this subject, ably chaired by Judge House from Los Angeles, and additionally provided comments through	No response required.

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		<p>defense lawyers serving on the Civil and Small Claims Advisory Committee.</p> <p>SPR10-16 represents proposed rules intended to integrate with statutory authorization for expedited jury trials contained in AB 2284 (Evans). Taken together, the proposed rules and statute will provide lawyers and litigants with guidance on the procedures for expedited jury trials, while still providing for appropriate flexibility.</p> <p>After considering the success of expedited jury trial models around the country, but particularly in Charleston, South Carolina, we are convinced that a voluntary, binding system as envisioned in SRP10-16 will move appropriate cases through the civil system more quickly and economically for litigants, lawyers, and the courts. Realistically, the proposal also will improve access to justice for litigants whose small cases cannot now be litigated.</p> <p>Over many hours of discussion, very specific questions were considered and resolved by the broad numbers of stakeholders involved in the working group. We would strongly encourage the Judicial Council to adopt the proposal in its entirety, as the language has been crafted holistically. Piecemeal changes could jeopardize the balance achieved in the proposal which could affect the positions of stakeholders.</p>		

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			We would like to thank the Judicial Council and the working group for the process which created this proposal. The product is an excellent example of collaboration between plaintiffs, defense, courts, insurers, the broader business community, consumer groups and others.	
5.	California Judges Association by Jordan O. Posamentier, Legislative Counsel San Francisco	A	We support this proposal for expedited jury trials, as it is voluntary and allows for more efficient adjudication where appropriate. [See also comments on specific provisions below.]	See responses to specific comment below.
6.	Civil Justice Association of California by John Sullivan and Kim Stone, Sacramento		The Civil Justice Association of California agrees with the proposed changes to allow expedited jury trials in California. These voluntary, binding, shortened trials will promote efficiency without sacrificing fairness. The ability for both parties to agree before-hand to a binding high and low amount is helpful. Allowing both parties to modify the rules by agreement adds to the flexibility and benefits of expedited jury trials. Our organization is dedicated to reducing the excessive and unwarranted litigation that increases business and government expenses, discourages innovation, and drives up the cost of goods and services for all Californians. We dislike frivolous and meritless litigation but we recognize that the courts must remain available	No response required.

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			<p>and open to help resolve legitimate disputes.</p> <p>Expedited jury trials will be beneficial for the plaintiffs and defendants who choose to use them, and will help conserve judicial resources and thus will help all Californians as well.</p> <p>We have great confidence in the process that the staff of the Office of Governmental Affairs has conducted. We were among the many diverse organizations and groups consulted in the development of these proposed rules. Our organization has studied the use of expedited jury trials in other states, and worked with other business and insurance organizations to bring representatives from South Carolina to educate our members about these shortened trials.</p> <p>Expedited Jury Trials appear to be a positive innovation. Therefore, we are pleased to state that we agree with the proposed changes.</p>	
7.	Consumer Attorneys of California By Christopher B. Dolan and John A. Montevideo, President and President-Elect Sacramento	A	<p>Consumer Attorneys of California (CAOC), a state-wide association, consisting of nearly three thousand attorneys who represent injured plaintiffs, is pleased to support the proposed changes to the California Rules of Court which would create an optional expedited jury trial system.</p> <p>These proposed rules are the product of a working group convened by the Judicial</p>	No response required.

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		<p>Council consisting of the key players in small case litigation, including, but not limited to the plaintiff’s bar, the defense bar, and business and insurance groups and truly represents a consensus agreement of the parties. CAOC sincerely believes that these proposed changes will result in greater access to justice for consumers. All too often, many injured consumers with strong liability but low damage claims are faced with the reality of having their claims precluded because the costs of litigation are too high when compared to the small damages. These changes will allow cases to be tried quickly and inexpensively, if the parties so choose.</p> <p>The proposed rules would allow parties to voluntarily agree to proceed with an expedited jury trial, as opposed to continuing with traditional litigation. Under the expedited jury trial model, the parties and their counsel would sign and submit a proposed consent order granting an expedited jury trial. The order would be binding unless later stipulated to by all the parties or the court later finds that good cause exists for the case not to proceed by expedited jury trial.</p> <p>The only mandatory elements of the proposed rules are as follows: 1) the parties must generally waive their rights to appeal and to make any post trial motions; 2) each side would</p>		

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		<p>have 3 hours to present their case; 3) the jury would be composed of eight or fewer jurors; 4) each side would be limited to three peremptory challenges; and 5) pretrial and trial matters would proceed according to separate expedited jury trial rules, which would include automatic discovery of an extensive list of materials (unless the parties agree otherwise.)</p> <p>All other agreements by the parties would be optional. However, parties would be encouraged to modify the rules and procedures of trial to customize the process to their cases. These agreements would be set forth in the proposed consent order and could include modifications such as limitations on the number of witnesses, relaxed evidentiary rules, and stipulations of facts.</p> <p>Parties in an expedited jury trial would also be allowed to, but not forced, to enter into high/low damages agreements. Such agreements would be confidential and would allow insurance companies and defendants to be certain about their potential exposure and also allow plaintiffs to be guaranteed a minimum payment upon a finding of liability. In a likely scenario, the parties may agree to cap damages at the insurance policy limit, therefore ensuring that the defendant will have no out of pocket expense.</p>		

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			<p>This completely voluntary process would promote access to justice and provide parties with a much needed alternative to the expense of traditional litigation. Additionally, the state will benefit greatly from the increased efficiency and decreased cost of litigation. For example, because appeals are only available in extremely limited cases involving fraud or misconduct, court reporters are not necessary. Many counties face huge backlogs of cases, and this option will allow many small cases to be adjudicated quickly, freeing up the courtrooms for larger cases, which necessitate more time consuming trials.</p> <p>The expedited jury trial system will help ensure that the courtrooms remain open to all citizens, not just corporations and the well-heeled.</p> <p>For these reasons, Consumer Attorneys of California supports the proposed rule changes which would establish an expedited jury trial option in California.</p> <p>If you or a member of your staff has any questions, please do not hesitate to contact one of our legislative staff members, at (916)-442-6902. Thank you for considering our views on this significant change in the law.</p>	
8.	Timothy J. Egan Attorney	AM	I understand that stipulations regarding expedited evidence can be entered into, but the	The rules allow for the parties to agree to the use of expert witness deposition testimony and

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	Petaluma		<p>limitations may be a practical impediment to full participation. If I can't get all of my evidence before the jury in a 3 hour time frame, I would probably not agree to the expedited process. In addition, bringing a live expert to court is expensive and time consuming and works against the spirit of the proposal. In most smaller cases, the testimony of one doctor (or other expert) may be all that is needed, but is still expensive and time consuming.</p> <p>Might I suggest that expert witness testimony be by video deposition with time limitations (such as one hour??) and reports as an alternative? Reports alone are not sufficient to convey an issue to the jury, but perhaps a combination of a video deposition and a report would be an effective way to allow a measure of testimony and foundational material at a much lower cost and in a shorter time frame. Of course, provisions for exceptions at the discretion of the court would also be needed. This would allow the parties to prepare their case ahead of time and redact portions of the superfluous testimony to meet the time limitations. In many cases, a doctor's deposition can be completed in an hour.</p>	reports in place of live testimony, but do not mandate it. The committee determined that flexibility is preferable to strict requirements as to how a case should be presented under the program.
9.	Hon. Robert Gannon Superior Court of Orange County	A	Hopefully civil litigants will take advantage of this well-considered option. I, for one, thank the committee for their efforts in formulating this proposal.	No response required.

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SPR10-16**Civil Trials: Expedited Jury Trials** (adopt Cal. Rules of Court, rules 3.1545–3.1558 and adopt form EJT-010-INFO)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
10.	Steve Goldberg Attorney Woodland Hills	AM	[See comments on specific provisions below.]	See responses to specific comments below.
11.	Hon. William M. Monroe Superior Court of Orange County	AM	How long has the New York and South Carolina models been in place? What changes, if any did these States have to make to accommodate the concerns of the Bar? I suspect the volume of cases may dictate the necessity of a separate department. It appears the current rules are general enough and would not require a specific rules. The fewer Rules the better. [See also comments on specific provisions below.]	The current proposal differs somewhat from New York and South Carolina models (which have been in place for several years) in order to meet the requirements of California civil law and procedure. Some programs in other states use dedicated trial departments for the summary trials, while others use private attorneys as temporary judges. This proposal does not mandate either of these approaches, but instead leaves it to each trial court to determine, for example, which judicial officers to use, whether a separate department should be devoted exclusively to expedited jury trials, and whether to use attorneys who meet the requirements to be appointed as temporary judges under rule 2.810 et seq.
12.	Orange County Bar Association by Lei Lei Wang Ekvall, President	AM	[See comments on specific provisions below.]	See responses to specific comments below.

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SPR10-16

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13.	Mike Pena Attorney Costa Mesa	A	While I agree with the proposed changes, I do not believe they will be accepted by defendants. I attended school and practiced law in Louisiana. Louisiana trial courts were becoming overwhelmed with requests for jury trial in small civil cases. The legislature addressed this by amending the law to allow trial by jury only where the good faith demand for each plaintiff exceeds \$50,000. Small civil cases are now disposed of quickly. An alternative approach for California would be to make judicial arbitration mandatory in each case where the demand (for each plaintiff) does not exceed \$50,000 and eliminate trial de novo - further review by appeal only.	The committee disagrees with the proposal to limit jury trials only to claims over \$50,000, and AB 2284 does not do so. The commentator’s proposal to require judicial arbitration of claims under that amount is outside the scope of the current proposal, which is intended to provide for jury trials even in limited civil cases.

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14.	Santa Clara County Bar Association By Angela F. Storey, Chair, Civil Practice Committee San Jose	N	<p>We feel this is an intriguing idea but there were several concerns.</p> <p>First, it is not clear if individual courts could opt out of this procedure or if it will be mandatory for every court. While this may be a very good idea for some courts, it is not something that is seen as needed in our county where trials get out the week they are scheduled.</p> <p>Second, this rule is designed to provide access to justice for those claims involving a relatively small monetary amount. Such cases are already dealt with either through small claims or limited jurisdiction, both of which have procedures that limit the costs to the litigants. It is not believed a third option is needed.</p> <p>Third, the proposed rule provides for an exchange of trial documents far earlier than our county and prior to the settlement conference which increases the work and costs for the litigants in the even they do settle at the settlement conference.</p>	<p>The legislation (AB 2284) authorizing expedited jury trials does not authorize courts to preclude such trials on a court-wide basis. Assistance with backed up civil calendars is not the only goal of the program. The proposal provides for jury trials that are shorter and less expensive than traditional jury trials.</p> <p>The committee notes that the program is not limited to cases with small monetary amounts, and believes that this new option for dealing with simpler cases will improve access to justice.</p> <p>The committee has concluded that the early exchange of documents is necessary to ensure that issues are resolved in advance of trial and that the parties will be able to proceed with a one-day trial. Moreover, the same issue— incurring costs and fees on a case before settlement—arises in almost all cases: substantial work is required on most cases before a settlement occurs.</p>
15.	Alex B. Scheingross Attorney San Diego	N	<p>1. At first blush it may seem fair that each side gets 3 hours for their case, but that would put the plaintiff at a severe disadvantage. The</p>	<p>1. The committee disagrees that the proposed time frames are unfair, but notes that there is nothing in the proposal that would preclude</p>

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			<p>plaintiff has to put on a case and introduce all of the evidence. All the defense attorney needs is some time to cross the plaintiff's witnesses and have the defense doctor testify. As long as the plaintiff has the burden of proof, the plaintiff needs more time than the defendant.</p> <p>2. The reason plaintiff's attorneys don't want to take or go to trial on small cases has little to do with taking 2 or 3 days instead of one. It's about the experts, how many of them we need and how much they cost. Who wants to sink \$25k into a \$10k case? These rules do nothing about that. Restrict the number of experts on each side to only one and don't allow expert witness fees to be more than \$250/hr. If a party wants to use a doctor that charges more, make that party responsible for fees in excess of \$250.</p> <p>3. Put a cap on recoverable costs for each side (\$1500?, \$2500?) so that the plaintiff is not terrified of being handed a cost bill for \$25,000 if the plaintiff loses.</p> <p>[See comment (4) on specific provision below.]</p>	<p>parties from agreeing to share the total amount of time in a different way.</p> <p>2. The rules allow for the parties to agree to limit the number of expert witness. The committee determined that flexibility is preferable to strict requirements as to how a case should be presented under the expedited jury trial program.</p> <p>3. The committee disagrees with this proposal. While a goal of the program is to ultimately lower costs, the amount of costs and fees is always a risk in litigation. Parties can agree to put a cap on costs and fees as part of the proposed consent order should they desire to do so.</p> <p>See response below.</p>
16.	State Bar of California, Committee on Administration of Justice by Saul Bercovitch,	AM	*The Committee on Administration of Justice supports this proposal in general, with some specific comments.	See responses to comments on specific provisions below.

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SPR10-16**Civil Trials: Expedited Jury Trials** (adopt Cal. Rules of Court, rules 3.1545–3.1558 and adopt form EJT-010-INFO)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
	Counsel		[See comments on specific provisions below.]	
17.	State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	AM	The Rules and Legislation Committee of the State Bar of California’s Litigation Section has reviewed the expedited jury trials proposal (SPR10-16) of the Invitations to Comment—Spring Cycle 2010, and appreciates the opportunity to submit these comments. We support the proposal in general, but recommend some changes, as discussed below. [See comments on specific provisions below.]	See responses to comments on specific provisions below.
18.	Superior Court of Los Angeles County	AM	[See comments on specific provisions below.]	See response to comment on specific provision below.
19.	Superior Court of San Diego County by Michael M. Roddy, Chief Executive	A	No specific comment.	No response required.
20.	Superior Court of Yolo County by James B. Perry, Chief Executive	A	Yolo Superior Court agrees with the adoption of these rules. The new rules will help to expedite civil jury trials, streamline the process for litigants, and save limited judicial resources.	No response required.
21.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Rules Working Group by Mary Jackson, Staff to Joint Rules Working Group	A	The Joint Rules Working Group identified the following operational impacts: 1. The proposed rule may provide potential cost savings to courts in the long run given that the streamlined process would require a smaller	1. The committee agrees that the impact should be positive.

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Commentator	Position	Comment	Committee Response	
		<p>jury panel. The amount of savings will vary from court to court and is dependent on how many litigants will utilize the expedited jury trial program and the amount of available court resources. The program may work well in larger courts having dedicated judicial officers for this function, but smaller courts might not see the same efficiencies from this program. In addition, the program may result in a cultural rather than operational change in smaller courts.</p> <p>2. The proposed rule may necessitate a change in the development of new case category/type to case management systems, as new codes may need to be developed to accommodate the pretrial proceedings and evidentiary matters filed in advance that are required in expedited jury trials.</p> <p>3. There is the potential need for courts to develop local rules regarding how expedited jury trial programs will be handled in each court.</p> <p>4. There may be limited training needed for judicial officers and court staff, depending on how the court implements the proposed rule.</p> <p>5. Many courts are attempting to transition away from paper, and the items in 3.1549(d) would require more staff time to process and store.</p>	<p>2. No response required.</p> <p>3. The proposal is intended to allow flexibility as to how each court will handle such trials.</p> <p>4. The committee agrees.</p> <p>5. The proposal does not preclude electronic filing or lodging of the items required in proposed rule 3.1548 (formerly rule 3.1549). The lodging of witness lists, proposed jury</p>	

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List of All Commentators, Overall Positions on the Proposal, and General Comments			
Commentator	Position	Comment	Committee Response
			questionnaires, proposed jury instructions, etc. in advance of the trial date is intended to allow the court to make determinations at the pretrial conference needed to ensure that the action can be tried in a single day.

Rule 3.1545(c)—Definition of High Low Agreement [now in AB 2284 at § 630.01(3)]		
Commentator	Comment	Committee Response
State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	A plaintiff is guaranteed to receive the designated minimum amount under a high/low agreement only if the plaintiff prevails. In common usage, a jury “returns” rather than “issues” a verdict. Accordingly, we suggest the following changes in proposed rule 3.1545(3) (deletions shown by strike through, additions underscored): “High/low agreement” means a written agreement voluntarily entered into by the parties that specifies a minimum amount of damages that the <u>a prevailing</u> plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict issued <u>returned</u> by the jury.	This provision is now in AB 2284. The committee agrees with the proposal to modify the definition to include the phrase “verdict returned” rather than “verdict issued.” The statute now contains that language. However, the committee disagrees that “prevailing” should be added before “plaintiff,” as the nature of a high/low agreement is such that it guarantees a plaintiff a certain amount from the defendant even if the plaintiff does not prevail before the jury.

Rule 3.1546(b)—Assignment of Judicial Officers		
Commentator	Comment	Committee Response
Association of California Insurance Companies (ACIC) Jeffrey J. Fuller,	ACIC recommends that the definition of “judicial officer” be expanded to include privately-compensated temporary judges requested by the parties pursuant to Rule 2.830 <i>ex seq.</i> So long	The committee disagrees. The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment

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Rule 3.1546(b)—Assignment of Judicial Officers		
Commentator	Comment	Committee Response
Vice President and General Counsel Sacramento	<p>as the parties must agree to the selection, there is no reason to automatically exclude such judges from conducting expedited jury trials.</p> <p>Must the parties agree to the person designated as the judicial officer for their EJT or is there a procedure for challenging the assignment similar to C.C.P. §170.6?</p>	<p>under rule 2.812 and has been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.</p> <p>Nothing in the proposal changes or limits the application of Code of Civil Procedure section 170.6 to judicial officers assigned to conduct expedited jury trials.</p>
Bruce M. Brusavich Attorney Agnew Brusavich Torrance	<p>I submit the following personal comments on this proposal.</p> <p>First, I would like to express my appreciation to those who have spent so much time developing this innovative ADR proposal to rely upon the wisdom of juries in resolving disputes in a voluntary, abbreviated format.</p> <p>However, I believe proposed Rule 3.1546(b) unnecessarily restricts a Presiding Judge from being able to utilize all of the resources that may be available, such as volunteer panels of attorneys.</p> <p>While I would certainly agree with a policy that does not open our court resources to for-profit ADR providers, utilizing volunteers to assist the court in resolving cases through all available ADR programs, including this one, should be an option available to the Presiding Judges. Most counties have volunteer panels who preside over settlement conferences. Last year, many of us trained to become “Neutral Case Evaluators.” If the parties are willing to have an expedited trial before a lawyer they agree to, the Presiding Judge should have the option, especially in these troubling times of shrinking court</p>	<p>The committee disagrees that the rule is too restrictive. The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.</p>

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Rule 3.1546(b)—Assignment of Judicial Officers		
Commentator	Comment	Committee Response
	budgets. I am not advocating the court must appoint such an officer, just that the option be available and not prohibited by the Rule.	
California Judges Association by Jordan O. Posamentier, Legislative Counsel San Francisco	We request clarification that retired assigned judges would be able to try these cases. The ambiguity arises under the Proposed Rule 3.1546, which says temporary judges requested by parties under Rule 2.830-2.835, whether or not privately compensated, may not be appointed to conduct expedited jury trial.	Assigned judges do not fall within rule 2.830, et seq. The authority of the Chief Justice to assign retired assigned judges is located in article VI, section 6(e) of the California Constitution. Hence, retired judges sitting on assignment will be able to conduct expedited jury trials, just as they can conduct any other jury trials. To the extent a retired judge seeks to conduct an expedited jury trial outside the assigned judges program, the retired judge must meet the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court.
Steve Goldberg Attorney Woodland Hills	*Proposed change: that the stipulating litigants NOT be limited to sitting judges. Limiting them to sitting judges forecloses in many instances a date certain for the EJT's. The Court can "Deputize" a Judicial Officer to serve as the presiding EJT Judge.	The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.
Hon. William M. Monroe Superior Court of Orange County Santa Ana	We already have an ADR program with compensated temporary judges. I am not in favor of privately compensated temporary judges. It was my impression the proposed program is to move cases along quickly and less expensively.	The committee agrees that the rule should preclude the use of privately compensated temporary judges.

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Rule 3.1546(b)—Assignment of Judicial Officers		
Commentator	Comment	Committee Response
Orange County Bar Association by Lei Lei Wang Ekvall, President Newport Beach	We see no reason for excluding the appointment of temporary judges under Rule 2.830 - 2.835 if the parties so agree; Rule 3.1546 (b) should be modified to allow the parties to so agree.	The committee disagrees. The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	<p>Comments are invited on whether proposed rule 3.1546(b) is necessary or sufficient to provide needed flexibility to the local courts in the scheduling and administration of expedited jury trial programs. CAJ supports the first sentence of this proposed rule as drafted, as well as the principle of insuring that the superior court has the necessary flexibility.</p> <p>The second sentence of proposed rule 3.1546(b) precludes the appointment of a temporary judge to conduct an expedited jury trial when the judge is requested by the parties under rules 2.830 – 2.835, whether or not privately compensated. CAJ was evenly divided on its views of this proposed rule. One third of the group approved of the rule as drafted. One third of the group recommended that the rule be modified to allow for the appointment of a <u>publicly</u> compensated temporary judge requested by the parties under rules 2.830 – 2.835. One third of the group recommended that the rule be modified to allow for the appointment of a temporary judge requested by the parties, whether publicly or privately compensated.</p>	<p>No response required to first part of comment.</p> <p>The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.</p>
State Bar of California, Litigation Section, Rules and Legislation Committee	The invitation to comment (p. 2) specifically requests comments on whether proposed rule 3.1546(b) is necessary or sufficient to provide needed flexibility to local courts in the	The committee agrees with first part of comment.

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Rule 3.1546(b)—Assignment of Judicial Officers		
Commentator	Comment	Committee Response
by Reuben A. Ginsburg, Cochair	<p>scheduling and administration of the expedited jury trial program. The proposed rule states that the presiding judge is responsible for the assignment of a judicial officer to conduct an expedited jury trial. We believe that this rule is appropriate and allows the flexibility for the presiding judge to make the assignment in each case or to make a general order allowing a judge assigned to a case for all purposes to conduct the expedited jury trial. We recommend no change in this provision.</p> <p>The invitation to comment (p. 3) also specifically requests comments on whether privately compensated temporary judges should be prohibited from conducting expedited jury trials, as stated in proposed rule 3.1546(b) or, alternatively, should be allowed with the parties’ consent. Under current rules, the parties may stipulate in writing to the appointment of an attorney as a privately compensated temporary judge, and the presiding judge may so order. (Cal. Rules of Court, rule 2.831.) All proceedings must be open to the public, although the proceedings need not be conducted in court facilities. (<i>Id.</i>, rule 2.834.) These rules apparently do not preclude a privately compensated temporary judge from conducting a civil jury trial. In light of these existing rules, we believe that an expedited jury trial should be treated no differently in this regard. Accordingly, we recommend deleting the second sentence of proposed rule 3.1546(b):</p> <p style="padding-left: 40px;">The presiding judge is responsible for the assignment of a judicial officer to conduct an expedited jury trial. A temporary judge requested by the parties under rules 2.830–2.835, whether or not privately compensated, may not be appointed to conduct an expedited jury</p>	<p>The committee disagrees with this part of comment. The proposed rule permits, upon the agreement of the parties, the use of attorneys who have satisfied the requirements for appointment under rule 2.812 and have been appointed by the court to serve as a temporary judge in that court. This provides flexibility while preserving both actual fairness and the perception of fairness in the conducting of trials that use publicly summoned jurors and court facilities.</p>

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Rule 3.1546(b)—Assignment of Judicial Officers

Commentator	Comment	Committee Response
	trial.	

Rule 3.1547—Question in ITC re whether signature of insurers should be required

[now in AB 2284 at § 630.03(a) and (e)(1)]

Commentator	Comment	Committee Response
Association of California Insurance Companies (ACIC) Jeffrey J. Fuller, Vice President and General Counsel Sacramento	ACIC recommends that where there is potential insurance coverage for the damages alleged in the underlying claim or a duty to defend the claim, the signature of the insured party should not be required if the insurer itself has signed the consent agreement. This would allow resolution of the claim even in those instances where an insured is unavailable or cannot be located. Indeed, the insurer's signature should be required even where an insured obtains separate counsel and signs a consent agreement to participate in the EJT process. An insurance carrier that is obligated to provide a defense or indemnity to an insured should not be bound by any EJT judgment unless the carrier has signed the consent agreement.	This provision is now in AB 2284. The committee disagrees with the suggestion. The committee has concluded that each party's signed consent is required in light of the party's waiver of certain rights by taking part in an expedited jury trial. AB 2284 also requires statements by each party that any insurer responsible for providing coverage or defense for that party has been informed of the expedited jury trial procedures and does not object to them. However the committee does not consider it necessary to require that each insurer sign the proposed consent order. When the insurer is not a party to the action, insurer consent is a matter between the insured and insurer.
Hon. William M. Monroe Superior Court of Orange County Santa Ana	The defendant's carrier is a player and should be invited to attend and participate.	Under AB 2284, a party must inform the insurer of the party's agreement to take part in an expedited jury trial. The amount of the insurer's participation is left to the party and insurer.
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	Proposed rule 3.1547(a) requires the parties and counsel to sign the proposed consent order. Specific comments are invited on whether the rules should also require the parties' insurance carriers, if any, to sign the proposed consent order. CAJ believes the rule should not require the parties' insurance	The committee agrees.

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Rule 3.1547—Question in ITC re whether signature of insurers should be required [now in AB 2284 at § 630.03(a) and (e)(1)]		
Commentator	Comment	Committee Response
	carriers to sign the proposed consent order, and that insurer consent is a matter that needs to be separately addressed between the insured and the insurer, just as in other circumstances.	
State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	The invitation to comment (p. 3) specifically requests comments on whether the parties’ insurance carriers should be required to sign the consent order. Under the proposed rules, the consent order must include a representation that the parties and their insurance carriers have been informed of the expedited jury trial rules, have agreed to participate, and have agreed to the consent order (proposed rule 3.1548(b)(1)), but only the parties and their counsel (not insurance carriers) must sign the proposed consent order (proposed rule 3.1547(a)). Because insurers in these circumstances are not litigating parties and are not required to sign other stipulations affecting the substantial rights of the parties, we believe that the insurers should not be required to sign a proposed consent order.	The committee agrees.

Rule 3.1547—Termination of agreement [now in AB 2284 at § 630.03(b)]		
Commentator	Comment	Committee Response
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	Proposed rule 3.1547(a)(1) permits the parties to stipulate to end the agreement to participate in the expedited jury trial procedure. As proposed, the parties could stipulate to end that agreement at any time before the jury returns a verdict. CAJ recommends that the rule be modified to provide some outside cut-off to stipulate to end the agreement. CAJ did not come to a	This provision is now in AB 2284. The agreement of the parties is an essential element of the expedited jury trial program, which is voluntary in nature. The committee has concluded that if, at any point, <i>all</i> parties agree that the case should not proceed as an expedited jury trial, removal of the case from the program should be

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Rule 3.1547—Termination of agreement [now in AB 2284 at § 630.03(b)]		
Commentator	Comment	Committee Response
	definitive agreement on the appropriate cut-off date, but one suggestion was the commencement of the pretrial conference. CAJ also believes, however, that a cut-off to <u>stipulate</u> to end the agreements should not preclude a request to the court to end the agreement, for good cause, at any time.	permitted and the case returned to the regular trial calendar or case management system.
State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	Proposed rule 3.1547(a)(1) states that the parties may “stipulate to end the agreement to participate” in an expedited jury trial. This provision does not require court approval to end the agreement and imposes no timing requirement. We believe that any stipulation to end the agreement to participate, which is effectively a stipulation to terminate the consent order, should be approved by the court to be effective, particularly if the stipulation is entered into close to the trial date. The termination of a consent order would affect the court’s calendar and may necessitate reassigning the case to another judge, so the court should have some say in the decision. Counsel should be required to show good cause to terminate a consent order. Moreover, any rule allowing the parties to terminate a consent order without court approval should impose a time limit so the parties cannot decide in the middle of trial that they would prefer another judge or that they would like to terminate the consent order for some other reason not constituting good cause.	This provision is now in AB 2284. The committee disagrees that good cause should be required for the parties to mutually end the agreement to take part in an expedited jury trial. The agreement of the parties is an essential element of the expedited jury trial program, which is voluntary in nature. The committee has concluded that if, at any point, <i>all</i> parties agree that the case should not proceed as an expedited jury trial, removal of the case from the program should be permitted, and the case returned to the regular trial calendar or case management system.

Rule 3.1548(a)—Submitting Proposed Consent Order [now rule 3.1547(a)]		
Commentator	Comment	Committee Response
State Bar of California,	It may be necessary to disclose a high/low agreement to the	The committee agrees and has modified the proposed

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SPR10-16

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

All comments are verbatim unless indicated by an asterisk (*).

Rule 3.1548(a)—Submitting Proposed Consent Order [now rule 3.1547(a)]		
Commentator	Comment	Committee Response
Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	<p>court before the entry of judgment in order to ensure that the judgment awards the amount of damages stipulated under the high/low agreement rather than the amount awarded by the jury. We recommend modifying proposed rule 3.1548(a)(2)(C) as follows:</p> <p style="text-align: center;">If necessary for <u>entry or</u> enforcement of the judgment.</p>	rule (now rule 3.1547(a)(2)(C)) as suggested.

Rule 3.1548(b)—Mandatory Content of Consent Order [now in AB 2284 at § 630.03(e)]		
Commentator	Comment	Committee Response
Association of California Insurance Companies (ACIC) Jeffrey J. Fuller Vice President and General Counsel Sacramento	<p>1. Proposed Rule 3.1548(b)(1): As discussed above, there is no reason to require the signature of a named party who is represented by an insurance carrier so long as the insurer has agreed to the provisions set forth in the consent order.</p> <p>2. Proposed Rule 3.1548(b)(2)(A):</p>	<p>1. As noted above, the committee disagrees. The committee has concluded that each party’s signed consent should be required in light of the party’s waiver of certain rights by taking part in an expedited jury trial. AB 2284 also requires statements by each party that any insurer responsible for providing coverage or defense for that party has been informed of the expedited jury trial procedures and does not object to them. However the committee does not consider it necessary to require that each insurer sign the proposed consent order. When the insurer is not a party to the action, insurer consent is a matter between the insured and insurer.</p> <p>2. The committee disagrees, having concluded that</p>

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Rule 3.1548(b)—Mandatory Content of Consent Order
[now in AB 2284 at § 630.03(e)]

Commentator	Comment	Committee Response
	<p>Parties should be allowed to make a posttrial motion for a stay of enforcement of the judgment where the court deems it appropriate in the interests of justice.</p> <p>3. Proposed Rule 3.1548(b)2)(B): How is the 3-hour limit enforced? Or, stated differently, what happens if a party exceeds the three-hour limit?</p> <p>The rule should clearly state that the time limit applies to multiple parties on the same side of a case or, alternatively, define what is meant by a “side” for purposes of enforcing the time limit.</p>	<p>permitting such posttrial motions would be antithetical to the goal of swift finality that is an integral part of expedited jury trials.</p> <p>3. The judge will be responsible for enforcing the time limit just as he or she is responsible for enforcing other rules of procedure during a trial.</p> <p>The provision regarding time limits agreed to (now in AB 2284 at section 630.03(e)(2)(b)) expressly states that each side (not each party) will have up to three hours in which to present its case.</p>
<p>State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair</p>	<p>We believe that proposed rule 3.1548(b)(1) imposes burdensome requirements on insured defendants, who must notify not only the insurers actually providing a defense but “any insurance carrier responsible for providing coverage or defense.” Under the proposal, insured defendants must not only notify those insurers but also must obtain their agreement “to take part in the expedited jury trial process” and to the consent order. These requirements are unnecessary and unwarranted, in our view. In many cases, coverage has not been determined as of the trial date, so a cautious defendant would have to treat all insurers that may later be found to have a coverage obligation as insurers “responsible for providing coverage or defense” and seek their agreement. Moreover, we believe that the insurers’ agreement should not be required. We recommend the following modifications to proposed rule 3.1548(b)(1):</p> <p align="center">“A preliminary statement that each named party and any insurance carrier <u>providing a</u></p>	<p>This provision is now in AB 2284. The committee disagrees that requiring a party to inform the party’s insurer of the provisions of the expedited jury trial rules and statutory provisions and obtaining their agreement to proceeding to trial under those provisions is overly burdensome.</p>

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Rule 3.1548(b)—Mandatory Content of Consent Order

[now in AB 2284 at § 630.03(e)]

Commentator	Comment	Committee Response
	<p>defense for responsible for providing coverage or defense on behalf of a party, individually identified in the proposed Consent Order, has been informed of the rules and procedures for an expedited jury trial and provided with the Judicial Council information sheet regarding expedited jury trials, has agreed to take part in the expedited jury trial process, and has agreed to all the specific provisions set forth in the Consent Order; and”</p> <p>The mandatory content of a proposed consent order under the proposal includes an agreement to waive the rights to appeal, move for directed verdict, or make any posttrial motions, except as provided in proposed rules 3.1555 and 3.1556. (Proposed rule 3.1548(b)(2).) These issues are addressed below. [See comments on specific provisions below.]</p>	<p>[See responses to specific comments below.]</p>

Rule 3.1548(c)—Optional Content of Consent Order

[now rule 3.1547(b)]

Commentator	Comment	Committee Response
<p>Hon. William M. Monroe Superior Court of Orange County Santa Ana</p>	<p>*The rule providing for Optional Content suggests that the parties could agree to modify everything thus defeating the spirit of the proposed rules.</p>	<p>The rules are intended to allow a great deal of flexibility for the parties, but the statute mandates that certain basic terms be included in each proposed consent order, including short trial time, fewer jurors and fewer juror challenges, and a strict limit on posttrial motions and appeals. See AB 2284 at §630.03(e) (formerly proposed rule 3.1548(b)) and proposed rule 3.1547(b)). Hence</p>

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Rule 3.1548(c)—Optional Content of Consent Order
[now rule 3.1547(b)]

Commentator	Comment	Committee Response
		those terms will apply in every expedited jury trial.

Rule 3.1548(d)—Court Action on Consent Order
[now in AB 2284 at § 630.03(f)]

Commentator	Comment	Committee Response
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	Proposed rule 3.1548(d) provides that 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, in which case the court <u>may</u> deny the proposed Consent Order in its entirety. CAJ recommends that the rule be modified so that if the court finds good cause <u>not</u> to proceed with the expedited trial process, it <u>must</u> deny the proposed Consent Order in its entirety. CAJ believes the court should not be able to modify, on its own, the terms of the stipulation by which the parties agreed to an expedited jury trial. That should not, however, preclude the parties from submitting a modified proposed Consent Order intended to address any concerns the court may have.	This provision is now in AB 2284. The committee intended the rule to provide that the court cannot, on its own, deny only portions of a proposed consent order for an expedited jury trial and in that way unilaterally modify the consent order. AB 2284, section 630.03(f) was amended to reflect this intent, by changing the word “may” to “shall” in the phrase “the court <u>may</u> deny the proposed consent order in its entirety.”

Rule 3.1549—Pretrial Submissions
[now rule 3.1548]

Commentator	Comment	Committee Response
Association of California Insurance Companies (ACIC) Jeffrey J. Fuller Vice President and General Counsel	Once the Consent Order is issued by the court, does a party have any recourse with respect to the court’s decision regarding any of the various items identified in the pre-trial exchange? For example, if there is no agreement regarding jury	AB 2284 does not permit a party to unilaterally withdraw from the agreement to take part in an expedited jury trial at any point after the court has issued the consent order. (See AB 2284, section 630.03(b);

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Rule 3.1549—Pretrial Submissions [now rule 3.1548]		
Commentator	Comment	Committee Response
Sacramento	instructions and a party disagrees with the court on proposed jury instructions that the party deems critical to its case, may the party withdraw from the EJT?	formerly proposed rule 3.1547.)
Steve Goldberg Attorney Woodland Hills	Proposed change: Insofar as Motions in Limine, the rules just need be more specific and include not only dates to file and serve the MIL's but also that the MIL's will be ruled on at the pre-EJT meeting with the Judge.	Rule 3.1548(f) requires that the motions in limine be <u>addressed</u> at the pretrial conference, but does not mandate they be ruled on at that point. The committee has concluded this provides the necessary flexibility for the court and the parties.
Santa Clara County Bar Association by Angela F. Storey, Chair, Civil Practice Committee	The proposed rule provides for an exchange of trial documents far earlier than our county and prior to the settlement conference which increases the work and costs for the litigants in the even they do settle at the settlement conference.	The committee has concluded that the early exchange of documents is necessary to ensure that issues are resolved in advance of trial and that the parties will be able to proceed with a one-day trial. Moreover, the same issue—incurring costs and fees on a case before settlement—arises in almost all cases: substantial work is required on most cases before a settlement occurs.
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	Proposed rule 3.1549(f) requires counsel to stipulate in writing to the admissibility of documentary evidence when no objection has been raised at the pretrial conference. At the same time, proposed rule 3.1553(c) states that failure to raise an objection to evidence before trial <u>does not</u> preclude making an objection or motion to preclude at trial. Because these rules may easily be construed to be in conflict, CAJ recommends that they be clarified and reconciled.	The committee has modified proposed rule 3.1552(c) (formerly rule 3.1553(e)) to clarify the ambiguity noted by the commentator, making that rule apply only to evidence not subject to the earlier rule (rule 3.1548(f), formerly numbered 3.1549(f)) governing pre-trial objections.

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Rule 3.1550(c)—Jury Voir Dire [now rule 3.1549]		
Commentator	Comment	Committee Response
Alex B. Scheingross Attorney San Diego	15 minutes for voir dire is a joke. I realize that if you want to get a trial done in 6 hours there has to be tradeoffs, but 1/3 of the jurors coming in are biased against personal injury claimants (Reptile, Ball and Keenan, Balloon Press 2009). Many of those biases are not evident without some deeper probing.	The committee has determined that the time limits for jury selection are necessary for the expedited trial time frame envisioned under this proposal. The proposed program is entirely voluntary. If a party believes that more time is required for picking a jury in a particular case, then the party need not agree to take part in an expedited jury trial.
Superior Court of Los Angeles County	<p>Proposed Rule 3.1550 (c) provides, in relevant part: “Parties are encouraged to submit a joint form questionnaire to be used with prospective jurors to help expedite the voir dire process.”</p> <p>The Los Angeles Superior Court and Small Claims Committee suggests that it is not appropriate for the court rules to intrude on the judicial discretion and independence of the trial judge by adopting language for “encouraging” the parties to engage in any procedures, and mandating that a submitted questionnaire must “be used” in expedited trials. Many judges believe that a questionnaire would actually slow down the trial. The trial court should maintain the discretion as to whether or not to request and/or use a joint form questionnaire.</p> <p>The committee suggests the following alternative language: “Parties may submit a joint form questionnaire which the court may consider for use with prospective jurors to help expedite the voir dire process.”</p>	The committee notes that nothing in the proposed rule interferes with a judicial officer’s discretion over how a jury may be selected in expedited jury trials. But the committee has concluded that, while it would not be appropriate to mandate use of a jury questionnaire, it is appropriate to encourage parties to submit an agreed upon questionnaire for judicial consideration at the pretrial conference in expedited jury trials because it is a tool that may speed up voir dire.

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Rule 3.1554—Jury Verdict [now in AB 2284 at § 630.07]		
Commentator	Comment	Committee Response
Association of California Insurance Companies (ACIC) Jeffrey J. Fuller Vice President and General Counsel Sacramento	Where 6 of 8 jurors reach a verdict, the result is clear. What happens if the jury cannot reach a result agreed to by six of them? Is there a mistrial? Does the high/low agreement automatically prevail? Is there another EJT undertaken?	This provision is now in AB 2284. If a jury cannot reach a result agreed to by six of the eight members, then a mistrial will result. A high/low agreement would not apply because no verdict exists. Because the proposed statute does not include any specific provisions regarding mistrials in expedited jury trials, Code of Civil Procedure section 616 and common law principles will apply. A court's declaration of a mistrial automatically reopens discovery and places the parties in the position of never having tried the case. It will be up to the parties whether to agree to another expedited jury trial.
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	*CAJ believes that the jury verdict should be subject to posttrial motions and appeals. See more detailed comment below under rule 3.1555.	This provision is now in AB 2284. The committee disagrees with the comment. See more detailed response to CAJ's specific comments below.
State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	Proposed rule 3.1554(a) states that the jury verdict is binding, subject to any high/low agreement or other stipulation concerning the amount of the verdict. We believe that the verdict also should be subject to the court's authority to modify the award on certain posttrial motions, as discussed below.	This provision is now in AB 2284. The committee disagrees with the comment. See more detailed response to comments on posttrial motion rules below.

Rule 3.1555—No directed verdict, additur, or remittitur

[now in AB 2284 at § 630.08]

Commentator	Comment	Committee Response
State Bar of California, Committee on Administration of	Proposed rules 3.1554, 3.1555 and 3.1556 limit the parties' rights to challenge the expedited jury trial result. CAJ believes	These provisions are now all contained in AB 2284, as sections 630.07–630.09. The committee has concluded

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Rule 3.1555—No directed verdict, additur, or remittitur
[now in AB 2284 at § 630.08]

Commentator	Comment	Committee Response
Justice by Saul Bercovitch, Counsel	that parties who agree to an expedited jury trial process should retain the option of agreeing to retain posttrial and appellate remedies, and that the waiver of all rights to appeal and move for directed verdict or make any posttrial motions (except as provided in rules 3.1555 and 3.1556) should not be mandatory. CAJ believes the availability of this option will attract more litigants to the expedited jury trial process, and that this would outweigh any added burden to the system. As practical matter, CAJ questions whether many of these cases will actually be appealed, but the mere availability of posttrial remedies and appeals may enhance the likelihood of parties agreeing to the process in the first place.	that strict limitations on posttrial motions and appeals is an integral part of the proposed expedited jury trials, furthering the goal of providing greater access to the courts by significantly reducing the cost of litigation overall. The limitations assure that cases litigated in expedited jury trial will not be extended by use of posttrial motions and appeals, but instead be determined swiftly and with finality.
State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair	<p>Proposed rule 3.1555 prohibits not only directed verdicts and motions for new trial based on excessive or inadequate damages, but also any motions to set aside the verdict or judgment (except on the grounds specified for a new trial motion under proposed rule 3.1556) and any motions to enter judgment “in favor of a party entitled to judgment as a matter of law.”</p> <p>The trial court’s general authority to order a directed verdict or judgment notwithstanding the verdict reflects the recognition that to enter judgment on a jury verdict with no support in the evidence would be a miscarriage of justice. We would not compel the parties to waive their rights to invoke the court’s authority in this regard. Moreover, the elimination of such motions would not result in substantial time savings and may undermine the parties’ confidence that justice will prevail. Rather than require the parties to waive their right to file such posttrial motions as a mandatory part of the consent order (see</p>	<p>Circulated rule 3.1555 is now in AB 2284 at section 630.08. The committee has concluded that strict limitations on posttrial motions and appeals is an integral part of the proposed expedited jury trials, furthering the goal of providing greater access to the courts by significantly reducing the cost of litigation overall. The limitations assure that cases litigated in expedited jury trial will not be extended by use of posttrial motions, but instead be determined swiftly and with finality.</p> <p>Parties can resolve concerns about potential jury verdicts in different ways. High/low agreements can deal with such concerns to a large extent by setting boundaries on the verdict amount, assuring plaintiffs of receiving a minimum amount and limiting the exposure of defendants. Alternatively, parties can use a different process, either taking part in a traditional jury trial or</p>

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Rule 3.1555—No directed verdict, additur, or remittitur
[now in AB 2284 at § 630.08]

Commentator	Comment	Committee Response
	<p>proposed rule 3.1548(b)(2)(A)), we would make such a waiver optional under proposed rule 3.1548(c).</p> <p>New trial motions provide an opportunity for the trial judge to avoid an injustice by ordering a new trial or reducing or increasing the damages award subject to the parties’ consent (Code Civ. Proc., § 662.5). The time and effort required to brief and hear such a motion, particularly in an expedited trial, would not be inordinate. We believe that new trial motions should be allowed on grounds of “Excessive or inadequate damages” (<i>id.</i>, § 657(5)), unless the parties agree to the contrary in the consent order or the parties have entered into a high/low agreement. We believe that new trial motions should be allowed on other grounds as well, as discussed below.</p>	<p>stipulating to a trial before a smaller jury but otherwise in full compliance with the existing Code of Civil Procedure, and in that way maintain their right to posttrial motions.</p>

Rule 3.1556—Limited right to appeal and posttrial motions
[now in AB 2284 at § 630.09]

Commentator	Comment	Committee Response
<p>State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel</p>	<p>* CAJ believes that parties who agree to an expedited jury trial process should retain the option of agreeing to retain posttrial and appellate remedies, and that the waiver of all rights to appeal and move for directed verdict or make any posttrial motions (except as provided in rules 3.1555 and 3.1556) should not be mandatory. [See more detailed comment at rule 3.1555].</p> <p><u>Clarification or additional rule</u> As proposed, the rules do not address whether the parties are</p>	<p>See response to CAJ comment above, regarding comment on rule 3.1555.</p> <p>The committee agrees. The provision now in AB 2284 at</p>

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Rule 3.1556—Limited right to appeal and posttrial motions
[now in AB 2284 at § 630.09]

Commentator	Comment	Committee Response
	<p>bound to proceed with an expedited jury trial if the first trial ends in a mistrial or is reversed on appeal. CAJ believes the rules should be modified to make clear that the parties are not bound by the original Consent Order and would be required to submit a new Consent Order to the court to proceed with an expedited jury trial, in the event of a retrial.</p>	<p>section 630.09(d) has been clarified so that it does not limit a new trial following appeal to an expedited jury trial.</p>
<p>State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Cochair</p>	<p>(1.) Limited Grounds for Vacating Judgment A new trial motion is purely statutory and can be granted only on one of the statutory grounds (Code Civ. Proc., § 657). (<i>Fomco, Inc. v. Joe Maggio, Inc.</i> (1961) 55 Cal.2d 162, 166.) We believe that the grounds for a new trial stated in the proposed rule should correspond with the statutory grounds to avoid any misunderstanding in this regard.</p> <p>Proposed rule 3.1556(a) and (c) require a waiver of all posttrial motions, excepting only new trial motions based on three specified grounds and motions relating to attorney fees and costs. We believe that this mandatory waiver is unwarranted and that the waiver should be made optional, as stated above. In addition to excessive or inadequate damages, we believe that a new trial motion should be allowed on grounds of “Irregularity in the proceedings of the court, jury or adverse party” (Code Civ. Proc., § 657(1)), “Misconduct of the jury” (<i>id.</i>, § 657(2)), “Insufficiency of the evidence to justify the verdict” (<i>id.</i>, § 657(6)), and “Error in law” (<i>id.</i>, § 657(7)).</p> <p>“Irregularity in the proceedings of the court” (Code Civ. Proc., § 657(1)) is the statutory language and therefore is preferable to “Judicial officer misconduct that materially affected the substantial rights of a party,” as stated in proposed rule</p>	<p>1. The proposed provisions for new trial motions in expedited jury trials are now in AB 2284, at section 630.09, and so, will be authorized by statute.</p> <p>As noted in the response above to the comment by the Litigation Section on rule 3.1555, the committee has concluded that limitations on posttrial motions is an integral part of the expedited jury trial program, and so will not seek an amendment to AB 2284 to expand the grounds on which they can be sought in such cases.</p> <p>Additionally, the limited grounds originally proposed in the rules (and now in AB 2284) are not intended to correspond with the grounds for new trial motions set forth in Code of Civil Procedure section 657, but are based instead on the more limited grounds for vacating an arbitration award. (Cf. Code Civ. Proc. § 1286.2.) The committee has determined that these more limited grounds are appropriate for expedited jury trials, in order to further the goal of shorter litigation that achieves</p>

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Rule 3.1556—Limited right to appeal and posttrial motions
[now in AB 2284 at § 630.09]

Commentator	Comment	Committee Response
	<p>3.1556(a)(1). The statutory language should encompass the sort of judicial misconduct that the proposed rule is intended to encompass. In any event, the proposed rule cannot establish any authority to grant a new trial motion that is not encompassed in the statutory grounds.</p> <p>Irregularity in the proceedings of the . . . jury” (Code Civ. Proc., § 657(1)) appears to largely duplicate “Misconduct of the jury” (<i>id.</i>, § 657(2)). For the sake of consistency, and because some cases seem to regard these grounds as interchangeable, we recommend including “Irregularity in the proceedings of the jury” as an authorized ground.</p> <p>“Irregularity in the proceedings of the . . . adverse party” (Code Civ. Proc., § 657(1)) would encompass attorney misconduct, which is an important ground for a new trial. Attorney misconduct should not be immunized or excused in an expedited jury trial. A party who is aware of attorney misconduct can move for a mistrial when the misconduct occurs (the proposal apparently would not preclude this), but the court’s view of the effect of the purported misconduct may differ after the verdict is returned. Moreover, a party may not discover some forms of attorney misconduct until after the trial. We believe that the court should retain the authority to order a new trial for attorney misconduct on a new trial motion.</p> <p>Proposed rule 3.1556(a)(2) appropriately includes “Misconduct of the jury” as a ground of a new trial motion.</p> <p>We believe that “Insufficiency of the evidence to justify the</p>	<p>finality more quickly.</p>

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Rule 3.1556—Limited right to appeal and posttrial motions
[now in AB 2284 at § 630.09]

Commentator	Comment	Committee Response
	<p>verdict” (<i>id.</i>, § 657(6)), and “Error in law” (<i>id.</i>, § 657(7)) should be included as grounds for a new trial motion to preserve the court’s authority to avoid a miscarriage of justice, unless the parties agree to the contrary in the consent order.</p> <p>Proposed rule 3.1556(a)(3) includes as grounds for a new trial motion “Corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party in such a way that either party was prevented from having a fair expedited jury trial.” It appears that “Irregularity in the proceedings of the court, jury or adverse party” (Code Civ. Proc., § 657(1)) would encompass these grounds. If the statute would not encompass these grounds, the proposed rule cannot establish additional grounds for a new trial motion. Again, it would be preferable to use the statutory language.</p> <p>[2.] Motion for New Trial Proposed rule 3.1556(b) states, “a party may <i>apply</i> for a new trial” (Italics added.) Code of Civil Procedure section 659 refers to the filing of a notice of intention to move for a new trial (1st par.) and states that such a notice is deemed a motion for a new trial (last par.). For greater consistency with the statutory language and greater certainty, we recommend that the proposed rule refer to the filing of a “notice of intention to move for a new trial.”</p> <p>[3.] Other posttrial Motions Our comments on the mandatory waiver of other posttrial motions are stated above. In addition, there may be legitimate grounds to set aside a judgment based on a special verdict</p>	<p>2. The committee agrees that the proposed modification would provide greater certainty as to how motions for new trials be made in expedited jury trials. AB 2284, at section 630.09(b) has been amended to parallel the language in Code of Civil Procedure section 659, referring to filing a notice of intention to move for a new trial, and to include a statement that such notice will be deemed to be a motion for new trial.</p> <p>3. The committee agrees that, even in light of the goal of swift finality of judgment, some of the post-judgment motions suggested by commentator should be available to parties in expedited jury trials. Specifically, AB 2284, at section 630.09(c), has been amended to provide that</p>

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Rule 3.1556—Limited right to appeal and posttrial motions
[now in AB 2284 at § 630.09]

Commentator	Comment	Committee Response
	<p>(Code Civ. Proc., § 663), correct a clerical error in the judgment under (<i>id.</i>, § 473(d)), set aside a void judgment (<i>ibid.</i>), grant mandatory or discretionary relief from a judgment (<i>id.</i>, § 473(b)), or amend a judgment to add an alter ego as judgment debtor. We believe that rather than require a mandatory waiver of all posttrial motions with very limited exceptions, such a waiver should be optional.</p> <p>[4.] Appeal Proposed rule 3.1556(d) seems to suggest that if an appeal is successful, the parties will be entitled to only a new expedited jury trial rather than a regular new trial. This suggests that the parties will continue to be bound by the prior consent order in the new trial. We believe that this is unduly restrictive. The parties should be allowed to forego an expedited jury trial if they so choose and have a regular jury trial instead. In any event, if the intention is to restrict the parties to a new expedited jury trial, this should be made more explicit.</p> <p>[5.] We believe that limiting the grounds for appeal to the grounds for a new trial motion is appropriate and sound, even if the mandatory waiver of other posttrial motions is eliminated or relaxed as we recommend above. Even if the grounds for a new trial motion are expanded, as recommended above, the grounds for appeal can be limited to those most seriously affecting the integrity of the proceedings, as in the proposal: “irregularity in the proceedings of the court, jury or adverse party” and “misconduct of the jury.”</p>	<p>parties in expedited jury trials are permitted to make post-judgment motions to correct clerical errors and to enforce the judgment after the proceedings are concluded. (Section 630.01 has also been amended to clarify that the waiver of posttrial motions does not include these motions.) The committee has concluded that the other motions suggested by the commentator should not be part of the proposed expedited jury trial process.</p> <p>4. The committee agrees and did not intend to restrict new trials following appeals to expedited jury trials. AB 2284, at section 630.09(d), has been amended to clarify this point.</p> <p>5. The committee agrees that the grounds for appeal of expedited jury trial judgments should be limited to the grounds for new trial currently set forth in the proposed expedited jury trial statutes.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR10-16

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

All comments are verbatim unless indicated by an asterisk (*).

<i>Expedited Jury Trial Information Sheet (form EJ-010-INFO)</i>		
Commentator	Comment	Committee Response
State Bar of California, Committee on Administration of Justice by Saul Bercovitch, Counsel	<p>In response to Question No. 12, the Information Sheet says: “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.” This may conflict with proposed rule 3.1546(b), at least to some extent, and should therefore be modified.</p> <p>In response to Question No. 5, the Information Sheet states, in its explanation of the waiver of posttrial remedies, that neither side will be able to ask for a new trial on the grounds “that legal mistakes were made before or during the trial.” This is a very broad statement that may be confusing. As an alternative, CAJ suggests a reference to “judicial error” instead of “legal mistakes.”</p>	<p>The committee has modified the proposed form in light of this comment.</p> <p>The committee disagrees with the proposed modification of this item. The form is intended to be in plain language understandable by parties, who may be confused by the term “judicial error.”</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Assembly Bill No. 2284

CHAPTER 674

An act to add and repeal Chapter 4.5 (commencing with Section 630.01) of Title 8 of Part 2 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, Evans. Jury trial: rules of court.

Existing law establishes the right to a trial by jury, and provides that a jury may be waived in a civil case only pursuant to specified manners. Under existing law, a jury trial consists of 12 persons, except that in civil actions and cases of misdemeanor, it may consist of 12 or any number less than 12, upon which the parties may agree. Existing law provides for the review of a judgment or order in a civil action or proceeding by appeal, and requires the Judicial Council to prescribe rules for the practice and procedure on appeal consistent with state law. Existing law requires the Judicial Council to provide by rule the practice and procedure for coordination of civil actions in convenient courts, including provision for giving notice and presenting evidence. Existing law authorizes the Judicial Council to promulgate rules governing pretrial conferences, and the time, manner, and nature thereof, in civil cases at issue, or in one or more classes thereof, in the superior courts.

This bill would establish the Expedited Jury Trials Act that would be operative until January 1, 2016. The bill would establish procedures for conducting expedited jury trials in civil cases where the parties sign a consent order to stipulate that those procedures apply, including provisions for a jury of 8 or fewer members, with no alternates, a limit of 3 peremptory challenges for each side, and a limit of 3 hours for each side to present its case. This bill would also provide that all parties waive all rights to appeal and to move for a directed verdict or to make any post-trial motions, except as provided. The bill would provide that the verdict in an expedited jury trial is binding, subject to any written high/low agreement, as defined. The bill would require the Judicial Council, on or before January 1, 2011, to adopt additional rules and uniform procedures, as provided.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known as the Expedited Jury Trials Act.

SEC. 2. Chapter 4.5 (commencing with Section 630.01) is added to Title 8 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 4.5. EXPEDITED JURY TRIALS

630.01. For purposes of this chapter:

(a) "Expedited jury trial" means a consensual, binding jury trial before a reduced jury panel and a judicial officer.

(b) "High/low agreement" means a written agreement entered into by the parties that specifies a minimum amount of damages that a plaintiff is guaranteed to receive from the defendant, and a maximum amount of damages that the defendant will be liable for, regardless of the ultimate verdict returned by the jury. Neither the existence of, nor the amounts contained in any high/low agreements, may be disclosed to the jury.

(c) "Post-trial motions" do not include motions relating to costs and attorney's fees, motions to correct a judgment for a clerical error, and motions to enforce a judgment.

630.02. The rules and procedures applicable to expedited jury trials are as follows:

(a) The procedures in this chapter and in the implementing rules of court shall apply to expedited jury trials, unless the parties agree otherwise, as permitted under subparagraph (E) of paragraph (1) of subdivision (e) of Section 630.03, and the court so orders.

(b) Any matters not expressly addressed in this chapter, in the implementing rules of court, or in a consent order authorized by this chapter and the implementing rules, are governed by applicable statutes and rules governing civil actions.

630.03. (a) All parties agreeing to participate in an expedited jury trial and, if represented, their counsel, shall sign a proposed consent order granting an expedited jury trial.

(b) Except as provided in subdivision (d), the agreement to participate in the expedited jury trial process is binding upon the parties, unless either of the following occurs:

(1) All parties stipulate to end the agreement to participate.

(2) The court, on its own motion or at the request of a party by noticed motion, finds that good cause exists for the action not to proceed under the rules of this chapter.

(c) Any agreement to participate in an expedited jury trial under this chapter may be entered into only after a dispute has arisen and an action has been filed.

(d) The court shall approve the use of an expedited jury trial and any high/low agreements or other stipulations for an expedited jury trial involving either of the following:

(1) A self-represented litigant.

(2) A minor, an incompetent person, or a person for whom a conservator has been appointed.

(e) The proposed consent order submitted to the court shall include all of the following:

(1) A preliminary statement that each named party and any insurance carrier responsible for providing coverage or defense on behalf of that party,

individually identified in the proposed consent order, have been informed of the rules and procedures for an expedited jury trial and provided with a Judicial Council information sheet regarding expedited jury trials, have agreed to take part in or, in the case of a responsible insurance carrier, not object to, the expedited jury trial process, and have agreed to all the specific provisions set forth in the consent order.

(2) The parties' agreement to all of the following:

(A) That all parties waive all rights to appeal and to move for directed verdict or make any post-trial motions, except as provided in Sections 630.08 and 630.09.

(B) That each side shall have up to three hours in which to present its case.

(C) That the jury shall be composed of eight or fewer jurors with no alternates.

(D) That each side shall be limited to three peremptory challenges, unless the court permits an additional challenge in cases with more than two sides as provided in Section 630.04.

(E) That the trial and pretrial matters will proceed under subparagraphs (A) to (D), inclusive, and, unless the parties expressly agree otherwise in the proposed consent order, under all other provisions in this chapter and in the implementing rules of court.

(f) The court shall 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, in which case the court shall deny the proposed consent order in its entirety.

630.04. (a) Juries in expedited jury trial cases shall be composed of eight jurors, unless the parties have agreed to fewer. No alternates shall be selected.

(b) The court shall allow each side three peremptory challenges. If there are more than two parties in a case and more than two sides, as determined by the court under subdivision (c) of Section 231, the parties may request one additional peremptory challenge each, which is to be granted by the court as the interests of justice may require.

630.05. Nothing in this chapter is intended to preclude a jury from deliberating as long as needed.

630.06. (a) The rules of evidence apply in expedited jury trials, unless the parties stipulate otherwise.

(b) 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 privilege or other law protecting confidentiality.

(c) The right to issue subpoenas and notices to appear to secure the attendance of witnesses or the production of documents at trial shall be in accordance with this code.

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

(b) A vote of six of the eight jurors is required for a verdict, unless the parties stipulate otherwise.

630.08. (a) By agreeing to participate in the expedited jury trial process, the parties agree 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.

(b) The court shall not set aside any verdict or any judgment, shall not direct that judgment be entered in favor of a party entitled to judgment as a matter of law, and shall not order a new trial, except on the grounds stated in Section 630.09.

630.09. (a) By agreeing to participate in the expedited jury trial process, the parties agree to waive the right to bring post-trial motions or to appeal from the determination of the matter, except as provided in this section. The only grounds on which a party may move for a new trial or appeal are any of the following:

(1) Judicial misconduct that materially affected the substantial rights of a party.

(2) Misconduct of the jury.

(3) Corruption, fraud, or other undue means employed in the proceedings of the court, jury, or adverse party that prevented a party from having a fair trial.

(b) Within 10 court days of the entry of a jury verdict, a party may file with the clerk and serve on each adverse party a notice of the intention to move for a new trial on any of the grounds specified in subdivision (a). The notice shall be deemed to be a motion for a new trial.

(c) Except as provided in subdivision (b), parties to an expedited jury trial shall not make any post-trial motions except for motions relating to costs and attorney's fees, motions to correct a judgment for clerical error, and motions to enforce a judgment.

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

630.10. All statutes and rules governing costs and attorney's fees shall apply in expedited jury trials, unless the parties agree otherwise in the consent order.

630.11. The Judicial Council shall, on or before January 1, 2011, adopt rules and forms to establish uniform procedures implementing the provisions of this chapter, including, but not limited to, rules for all of the following:

(a) Additional content of proposed consent orders.

(b) Pretrial exchanges and submissions.

(c) Pretrial conferences.

(d) Time limits for jury selection.

(e) Time limits for trial, including presentation of evidence and argument.

(f) Presentation of evidence and testimony.

(g) Any other procedures necessary to implement the provisions of this chapter.

630.12. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

Comments on Statutory Provisions

As noted in the report on recommended expedited jury trial rules, a significant portion of the proposed rules that were circulated for public comment were, during the comment period, introduced in the Legislature in statutory form, as amendments to Assembly Bill 2284 (Evans). Hence the comments on those provisions are not directly relevant to the proposed implementing rules being recommended. The author of AB 2284, however, cognizant that the text of the statutory amendments had originally been developed within the Judicial Council rule-making process, agreed to consider for further amendment to the bill any comments received on provisions initially proposed as rules.

All the comments received and the committee's responses are set forth in the chart of comments attached at pages 21–59, including the comments on the provisions now in statute. The more substantive comments on the statutory provisions and the responses to the specific questions raised in the invitation to comment relating to those provisions are summarized below. The committee's recommendations based on these comments have been incorporated into AB 2284.

No requirement that insurer sign proposed consent order

Specific comments were invited on whether the rules, in addition to requiring the parties and their counsel to execute the proposed consent order, should also require the parties' insurance carriers, if any, to sign the agreement. The issue of who should sign the proposed consent order (now at § 630.03(a) and (e)(1), circulated for comment as proposed rules 3.1547 and 3.1548(b)), was addressed by the Association of California Insurance Companies, who opined that the insurer's signature was appropriate and, if provided, made the signature of the party unnecessary. Both the CAJ and the Litigation Section, on the other hand, asserted that the signature of the insurer should not be required on the proposed consent order as the insurer is not a party to the action.

The committee agreed with the latter position. Each party's signed consent should be required because the party waives certain rights by taking part in an expedited jury trial. When the insurer is not a party to the action, insurer consent is a matter between the insured and insurer. The committee notes, however, that the bill does require statements by each party or their counsel that any insurer responsible for providing coverage or defense for that party has been informed of the expedited jury trial procedures and does not object to them. (Code Civ. Proc. § 630.03(e)(1).)

Expansion of posttrial motions and appeal rights

The two State Bar commentators proposed that the waiver of posttrial motions for directed verdict, additur or remittitur, and motions for new trial on most grounds be made a voluntary waiver rather than a mandatory one. (See § 630.08, originally circulated for comment as proposed rule 3.1555.) The CAJ also proposed that the waiver of appeal rights be voluntary. The

committee, however, concluded that strict limitations on posttrial motions and appeals are an integral part of the proposed expedited jury trial program, furthering the goal of providing greater access to the courts by significantly reducing the cost of litigation overall. The limitations ensure that cases litigated in expedited jury trials will not be extended by use of posttrial motions and appeals, with delays for briefing and hearings, but instead be determined swiftly and with finality.

Moreover, the commentator's concerns about potentially improper or baseless jury verdicts can be resolved in different ways. High/low agreements can deal with such concerns to a large extent by setting boundaries on the verdict amount, assuring plaintiffs of receiving a minimum amount, and limiting the exposure of defendants. Alternatively, parties can use a different process, either taking part in a traditional jury trial or stipulating to a trial before a smaller jury but that otherwise is in full compliance with the existing Code of Civil Procedure, and in that way maintain their right to posttrial motions.

The Litigation Section also made several comments about the proposed grounds for making motions for new trial that are now included in the statute. (§ 630.09, originally circulated for comment as rule 3.1556.) First, the commentator asserted that statutory authorization was required for any grounds differing from those in Code of Civil Procedure section 657. That concern has now been addressed by inclusion of these provisions in AB 2284 rather than in the rules. Second, the Litigation Section proposed that the grounds for motions for new trials in the expedited jury rules (now statutes) should, for the sake of consistency, use the same wording as similar grounds for such motions listed in Code of Civil Procedure section 657 for traditional jury trials. However, the limited grounds proposed originally in the rules and now in AB 2284 are not intended to correspond with the grounds for new trial motions in section 657 but are based instead on the more limited grounds for vacating an arbitration award set forth in Code of Civil Procedure section 1286.2. The committee determined that these more limited grounds are appropriate for expedited jury trials in order to further the goal of shorter litigation that achieves finality more quickly.

The committee agreed with comments that the procedures for making new trial motions in the expedited jury trial statutes should parallel those in Code of Civil Procedure section 657. The committee also agreed with the suggestion that the posttrial motions permitted in expedited jury trials be expanded to include motions for correction of clerical error in a judgment and motions for enforcement of judgment. In addition, the committee concurs that the statute should be clarified so that it does not restrict new trials following successful appeals only to expedited jury trials. Amendments have been made to section 630.09 and 630.01 that reflect these recommended modifications.