

Invitation to Comment

Title	Civil Pretrial Rules (amend Cal. Rules of Court, rules 3.250, 3.727, 3.728, and 3.1112, and adopt rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1410, 3.1412, 3.1414, 3.1416, 3.1418, 3.1420, 3.1422, 3.1424, 3.1426, and 3.1428)
Summary	To improve the preparation for civil trials, a comprehensive set of pretrial rules would be adopted for all general civil cases, except complex cases. These rules would require the exchange of witness lists, exhibit lists, and other documents before trial; authorize optional trial management conferences; require parties to confer about pretrial issues; and encourage parties to prepare stipulations on undisputed trial issues. The civil case management rules would be amended to permit courts to require the parties to prepare joint statements of the case, joint witness lists, joint exhibit lists, joint jury instructions, and joint special verdicts in appropriate cases.
Source	Civil and Small Claims Advisory Committee Hon. Lee Smalley Edmon, Chair Uniform Rules Subcommittee Hon. Brian R. Van Camp, Chair
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Discussion	<p>The Civil and Small Claims Advisory Committee proposes that the Judicial Council adopt the following uniform statewide pretrial rules:</p> <ol style="list-style-type: none"> 1. Rule 3.1400 (Purpose, application, and scope) 2. Rule 3.1402 (Sanctions); 3. Rule 3.1404 (Jury deposits); 4. Rule 3.1406 (Exchange of documents); 5. Rule 3.1408 (Trial management conference); 6. Rule 3.1410 (Parties to confer);

7. Rule 3.1412 (Motions in limine);
8. Rule 3.1414 (Witness lists);
9. Rule 3.1416 (Exhibit lists);
10. Rule 3.1418 (Use of depositions);
11. Rule 3.1420 (Video or audio presentations);
12. Rule 3.1422 (Statement of the case to be read to the jury);
13. Rule 3.1424 (Trial briefs);
14. Rule 3.1426 (Jury instructions); and
15. Rule 3.1428 (Glossary).

The committee also proposes that the Judicial Council amend the following rules on the filing of papers, civil case management, and motion papers:

16. Rule 3.250 (Limitations on the filing of papers);
17. Rule 3.727 (Subjects to be considered at the case management conference);
18. Rule 3.728 (Case management order); and
19. Rule 3.1112 (Motion papers).

The text of the new and amended rules is attached at pages 10–20.

Overview

Some courts have local rules regarding pretrial conferences and the papers that must be exchanged by the parties and submitted to the court at or before the conference.¹ These rules help the parties and the courts prepare for trial. They ensure that witness lists, exhibit lists, jury instructions, and other documents have been

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

timely prepared, served on all parties, and submitted to the court. The conferences and other requirements also assist in resolving disputes before trial and narrowing the issues to be tried.

The California Rules of Court currently contain no statewide pretrial rules. As a result, there are no applicable pretrial procedures in some courts. Also, the courts with pretrial rules have different local practices and procedures. The proposed rules would provide a uniform set of pretrial rules for practitioners, courts, and judges to use to prepare for the trial of most civil cases.

Proposed Pretrial Rules

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

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

This rule prescribes the purpose and scope of the new pretrial rules. The purpose of the rules is to ensure that all parties in civil cases are prepared for trial so that trials will be conducted more fairly and efficiently. (Rule 3.1400(a).)

Proposed rule 3.1400 provides that the new pretrial rules are applicable to all general civil cases, except complex cases. The parties would be allowed to stipulate to a different set of pretrial procedures with the approval of the court. Also, the court would have the discretion to modify or waive the provisions of the pretrial rules in a particular case, provided that there is good cause for doing so. The rule lists the factors that the court should consider in determining whether good cause exists. (Rule 3.1400(b).)

To ensure that the parties have adequate notice of any modifications or waivers of the pretrial rules, rule 3.1400 provides that the court should determine whether any modifications or waivers are appropriate at the case management conference held under rule 3.727 and should include them in its case management conference order under rule 3.728. (Rule 3.1400(b).)

2. *Rule 3.1402 (Sanctions)*

This rule provides that a party's failure to comply with the pretrial rules may result in sanctions. (Rule 3.1402(a).) The rule states that the sanctions may include "any sanction or order authorized by law." (Rule 3.1402(b).)

Comments are invited on whether this rule should identify specific sanctions (for example, that a party may be precluded from using an exhibit at trial that was not included on the party's exhibit list or may waive a jury trial by failing to deposit advance jury fees). (See Code Civ. Proc., § 631(d)(5).)

3. *Rule 3.1404 (Jury deposits)*

This rule provides that, in any civil case in which a jury trial is demanded, jury fees must be deposited in compliance with Code of Civil Procedure sections 631 et seq. Rule 3.1404 also states that each party demanding a jury trial must deposit advance jury fees, in the amount stated on the court's fee schedule, at least 25 days before the date initially set for trial, except that in unlawful detainer cases the fees must be deposited at least 5 days before the date set for trial.

4. *Rule 3.1406 (Exchange of documents)*

This rule requires parties to exchange specified documents before the trial management conference or, if no conference is held, before the trial. The documents to be exchanged include statements of the case to be read to the jury, unless the court permits brief opening statements by counsel to the jury panel; any proposed jury questionnaires; lists of witnesses and exhibits; itemized lists of proposed standard introductory instructions to be read to the jury; any proposed special preinstructions to be read to the jury; itemized lists of proposed standard jury instructions; any special jury instructions; any proposed verdict forms; any trial briefs; itemized lists of any recorded materials such as videotapes to be used at trial; and specific deposition testimony to be used at trial.

Comments are invited on the list of documents to be exchanged under rule 3.1406(a), including whether any additional documents—such as proposed voir dire questions—should be added

to the list.

Existing local rules provide a wide range of different times before trial for the exchange of documents and their submission to the court. The times vary from the day of trial to weeks before trial. Rule 3.1406 provides a standard set of times for the exchange and submission of documents. The rule specifies that the time for exchange of documents, except for deposition transcripts intended to be used at trial, is 5 court days before the trial management conference or, if there is no conference, 5 court days before the trial.

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

5. *Rule 3.1408 (Trial management conference)*²

This rule authorizes courts by court order or local rule to order the parties in a civil case to participate in a trial management conference. The conference must be attended by the attorneys who will actually try the case or by attorneys with full authority to dispose of all pretrial matters and by all self-represented litigants. (Rule 3.1408(a).)

Courts will prescribe the date of the trial management conference. However, rule 3.1408 provides that the conference is to be held within 10 calendar days of the trial date. This provision is intended to ensure that the trial management conferences are not held too long before the trial. (Rule 3.1408(b).)

Comments are specifically invited on the time limit established for holding the trial management conference, which as indicated is to be held within 10 calendar days of the trial date. Parties and the court may modify the timing of the conference under rule 3.1400(b)(1) and the court may modify the timing under the good cause exception in rule 3.1400(b)(2). The question has

² Courts use a variety of terms to describe the conference, including final case management or status conference, issue conference, trial or pretrial conference, trial readiness conference, and pre-voir dire conference. The *California Judges Benchbook: Civil Proceedings—Trial* (CJER 1997) uses the term “trial management conference,” which is also used by some courts because it reflects the judge’s responsibility under the Trial Delay Reduction Act to manage cases from filing to disposition. Because the meaning of the term “trial management conference” is clear, that term is used in these rules.

been raised, however, whether the courts should have even more flexibility in scheduling this conference.

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

6. Rule 3.1410 (Parties to confer)

This rule requires the parties to confer at least two court days before the trial management conference or, if no conference is held, at least two court days before trial. The purpose of conferring is to attempt to resolve issues such as any questions to be proposed for voir dire, the admissibility of documents, the identity of witnesses, the intended use of deposition transcripts, a statement of the case to be read to the jury, jury instructions, and any anticipated scheduling problems. (Rule 3.1410(a).) The rule on conferring encourages the parties to prepare stipulations on issues not in dispute and to submit them to the court before trial. (Rule 3.1410(b).)

7. Rule 3.1412 (Motions in limine)

Rule 3.1412 defines motions in limine as motions made in connection with the admissibility of evidence. It requires motions in limine to follow rule 3.112's requirements for motions and to specifically identify the evidence that is the subject of the motion. The rule also requires that the motion include a statement that the parties have conferred regarding the motion. (Rule 3.1412(a)–(b).)

The rule prescribes the time for filing motions in limine, which would be in accordance with the time for noticed motions under Code of Civil Procedure section 1005. (Rule 3.1412(c).)

The rule provides that motions in limine must not be used for improper purposes such as to obtain summary judgment, summary adjudication, precedence of issues for trial, or judgment on the pleadings. (Rule 3.1412(d).) The rule also provides that the court may defer ruling on a motion in limine and may order that no mention or display of the matter that is the subject of the motion be made in the presence of the jury, unless and until the court orders otherwise. (Rule 3.1412(e).)

Comments are specifically invited on (1) the provision prescribing the time for filing motions in limine, which under the proposed rule would be consistent with Code of Civil Procedure section 1005, and (2) the provision that the hearing date for motions in limine should be the date of trial. Together, these two provisions are intended to ensure that motions in limine are served and filed with sufficient time for the parties to fully prepare and respond to them and yet not too long before trial. Any suggested alternatives should explain how they would allow time for the preparation of the motions and an opportunity to respond, and how the timing would work in relation to the time for trial.

8. Rule 3.1414 (Witness lists)

This rule requires each party to serve and submit to the court before trial a list of all witnesses, including expert witnesses, except for witnesses to be used solely for impeachment or rebuttal.

9. Rule 3.1416 (Exhibit lists)

This rule requires each party to serve and submit to the court before trial a list of all exhibits that the party intends to introduce at trial, except for exhibits to be used for impeachment or rebuttal.

10. Rule 3.1418 (Use of depositions)

This rule provides that a party that intends to use a deposition transcript at trial and a party that objects to its use must follow certain procedures. (Rule 3.1418(a)–(d).) The rule includes an exception for situations in which the proponent of the deposition could not reasonably have anticipated the need for the use of the transcript at trial. Under these circumstances, the court may permit the use of the transcript in the interests of justice under such conditions as may be appropriate. (Rule 3.1418(e).)

11. Rule 3.1420 (Video or audio presentations)

This rule specifies that parties intending to use a video or audio presentation at trial must prepare a transcript of the presentation, and serve it on all parties and submit it to the court.

12. Rule 3.1422 (Statement of the case)

This rule requires the parties to prepare a brief, nonargumentative statement of the facts of the case to be read to the jury by the court. The parties must attempt to agree on a joint statement. Alternatively, the rule provides that, if the court under rule 2.1034 permits brief opening statements by counsel to the jury panel, counsel may prepare such statements instead of the joint statement to be read by the court.

13. Rule 3.1424 (Trial briefs)

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

14. Rule 3.1426 (Jury instructions)

This rule requires each party before trial to exchange jury instructions as provided under rule 3.1406(a)–(b). On the date of trial, all the instructions must be served and submitted to the court in the format prescribed under rule 2.1055. (Rule 3.1426(a).)

The rule also authorizes the court to order the parties to meet and confer and to prepare a set of joint introductory instructions, preinstructions, and standard and special jury instructions, and a joint verdict form. (Rule 3.1426(b).)

15. Rule 3.1428 (Glossary)

This rule requires that, if a case involves technical or unusual vocabulary, the party using this vocabulary must prepare, exchange, and submit a special glossary to the court as provided under rule 3.1406(a)–(b).

Proposed Amendments

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

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

Rule 3.250(15) would be amended to clarify that the list of expert witnesses that is not to be filed under the rule is the list of expert witnesses that is exchanged in discovery under Code of Civil Procedure section 2034.260(b)(1). It is different from the list of experts that is to be exchanged before trial and filed with the court under rules 3.1406 and 3.1414.

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

Rule 3.727 would be amended to add two new items to the list of subjects to be considered at the case management conference: (1) “Whether the case is an appropriate one for the court to require the parties to prepare a joint statement of the case to be read to the jury, a joint witness list, a joint exhibit list, a joint set of standard introductory instructions, a joint set of special preinstructions, a joint set of standard jury instructions, a joint set of special jury instructions, or a joint verdict form;” and (2) “Whether the case is an appropriate one for modifying or waiving any of the standard pretrial rules under rule 3.1400(a).”

18. Rule 3.728 (Case management order)

Rule 3.728 would be amended to include two new items to the list of appropriate provisions in a case management conference order: (1) “Whether the parties are required to prepare a joint statement of the case to be read to the jury, a joint witness list, a joint exhibit list, a joint set of standard introductory instructions, a joint set of special preinstructions, a joint set of standard jury instructions, a joint set of special jury instructions, or a joint verdict form”; and (2) “Whether any of the standard pretrial rules are modified or waived under rule 3.1400(a).”

19. Rule 3.1112 (Motion papers)

In subdivision (f), on motions in limine, the last sentence would be deleted because it would be inconsistent with the time requirements in new rule 3.1412.

Attachment

Rules 3.250, 3.727, 3.728, and 3.1112 of the California Rules of Court would be amended and rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1410, 3.1412, 3.1414, 3.1416, 1418, 3.1420, 3.1422, 3.1424, 3.1426, and 3.1428 would be adopted, effective January 1, 2008, to read:

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

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

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

9
10 (1)–(14) * * *

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

15
16 (16)–(23) * * *

17
18 **(b)–(c) * * ***

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

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

25
26 (1)–(12) * * *

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

33
34 (14) Whether the case is an appropriate one for modifying or waiving any of the
35 standard pretrial rules under rule 3.1400(a);

36
37 ~~(13)~~(15) * * *

1 ~~(14)~~(16) * * *

2

3 ~~(15)~~(17) * * *

4

5 ~~(16)~~(18) * * *

6

7 ~~(17)~~(19) * * *

8

9 ~~(18)~~(20) * * *

10

11 ~~(19)~~(21) * * *

12

13 ~~(20)~~(22) * * *

14

15 **Rule 3.728. Case management order**

16

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

21

22 ~~(1)~~–~~(10)~~ * * *

23

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

27

28 (12) Whether the parties are required to prepare a joint statement of the case to be
29 read to the jury, a joint witness list, a joint exhibit list, a joint set of standard
30 introductory instructions, a joint set of special preinstructions, a joint set of
31 standard jury instructions, a joint set of special jury instructions, or a joint
32 verdict form;

33

34 (13) Whether any of the standard pretrial rules are modified or waived under rule
35 3.1400(a);

36

37 ~~(12)~~(14) * * *

38

39 ~~(13)~~(15) * * *

1 **Rule 3.1112. Motions papers and other pleadings**

2
3 **(a) Motions Required papers**

4
5 * * *

6
7 **(b)–(e) * * ***

8
9 **(f) Motions in limine**

10
11 Notwithstanding (a), a motion in limine filed before or during trial need not
12 be accompanied by a notice of hearing. ~~The timing and place of the filing~~
13 ~~and service of the motion are at the discretion of the trial judge.~~

14
15 **Division 14. Pretrial [Reserved]**

16
17 **Rule 3.1400. Purpose, application, and scope**

18
19 **(a) Purpose**

20
21 The purpose of the rules in this division is to ensure that all parties in civil
22 cases are prepared for trial so that trials will be conducted more fairly and
23 efficiently.

24
25 **(b) Application and scope**

26
27 The rules in this division apply to all general civil cases except complex
28 cases, unless:

- 29
30 (1) The parties stipulate to a different set of pretrial procedures in an
31 individual case and the court approves; or
32
33 (2) Based on good cause, the court finds in an individual case that
34 particular provisions of the rules in this division should be modified or
35 waived. In deciding whether any provision of these rules should be
36 modified or waived, the court should consider the following:

37
38 (A) Whether the type and subject matter of the action to be tried is
39 complicated;

40
41 (B) The number of causes of action, cross-actions, and affirmative
42 defenses that will be tried;

- 1 (C) The number of anticipated pretrial motions that will raise difficult
2 or novel issues;
3
4 (D) Whether the case will involve the management of a large number
5 of witnesses or a substantial amount of documentary evidence;
6
7 (E) Whether the case will involve the management of a large number
8 of separately represented parties with separate interests;
9
10 (F) The general complexity of the issues to be tried, including issues
11 of first impression;
12
13 (G) The amount in controversy and the type of remedies sought;
14
15 (H) The nature and extent of the injuries or damages;
16
17 (I) Whether the trial will be a jury or a nonjury trial;
18
19 (J) The anticipated length of trial; and
20
21 (K) The achievement of a fair, timely, and efficient disposition of the
22 case.
23

24 If the court determines under (2) to modify or waive any particular
25 provisions of the pretrial rules in this division, the court should decide on the
26 modifications or waivers and advise the parties about them at the time of the
27 case management conference specified in rule 3.727 and should include the
28 modifications or waivers in the case management order issued under rule
29 3.728.
30

31 **Rule 3.1402. Sanctions**
32

33 **(a) Sanctions for violation of a rule or order**
34

35 A party's failure to comply with the rules in this division may result in
36 sanctions.
37

38 **(b) Types of sanctions**
39

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

1 **Rule 3.1404. Jury deposits**

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

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

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

13
14 Unless otherwise ordered under rule 3.728, before the trial management
15 conference or, if no conference is held, before trial, the parties must
16 exchange the following:

- 17
18 (1) Statements of the case to be read to the jury, unless the court permits
19 brief opening statements by counsel to the jury panel under rule 2.1034;
20
21 (2) Any proposed jury questionnaires;
22
23 (3) Witness lists;
24
25 (4) Exhibit lists;
26
27 (5) Itemized lists of proposed standard introductory instructions to be read
28 to the jury under rule 2.1035;
29
30 (6) Any proposed special preinstructions to be read to the jury under rule
31 2.1035;
32
33 (7) Itemized lists of proposed standard jury instructions;
34
35 (8) Any proposed special jury instructions;
36
37 (9) Proposed verdict forms;
38
39 (10) Any trial briefs;
40
41 (11) Itemized lists of any audiotapes, videotapes, DVDs, CDs, or other
42 similar recorded materials to be used at trial;
43

1 (12) A special glossary if the case involves technical or unusual vocabulary;
2 and

3
4 (13) Specific deposition testimony to be used at trial.

5
6 **(b) Time for exchange**

7
8 (1) Service on parties

9
10 Unless otherwise ordered under rule 3.728, all the documents listed in
11 (a)(1)–(12) must be exchanged at least 5 court days before the trial
12 management conference or, if no trial management conference is held, at
13 least 5 court days before the trial. The time for the exchange of the
14 transcripts of deposition testimony under (a)(13) is provided in rule 3.1418.

15
16 (2) Submission to the court

17
18 Copies of all documents served under (a) must be filed with the court at the
19 same time that they are served on the parties in the case, except for
20 documents under (a)(13) which must be submitted to the court on the date of
21 trial.

22
23 **Rule 3.1408. Trial management conference**

24
25 **(a) Conference**

26
27 The court may provide by court order or by local rule that the parties in a
28 civil case must participate in a trial management conference held before the
29 trial in the case. The conference must be attended by the attorneys who will
30 actually try the case or by attorneys with full authority to dispose of all
31 pretrial matters and by all self-represented parties.

32
33 **(b) Time of conference**

34
35 The court will prescribe the date of the conference, which will be held within
36 10 calendar days of the trial date.

37
38 **(c) Trial management order**

39
40 At or after the trial management conference, the court may issue a trial
41 management order or orders that will govern the proceedings in the case.
42

1 **Rule 3.1410. Parties to confer**

2
3 **(a) Conferring**

4
5 At least two court days before the trial management conference or, if no
6 conference is held, at least two court days before the trial, the parties must
7 confer for the purpose of narrowing the issues and preparing the case for
8 trial. The parties must attempt to resolve issues concerning:
9

10 (1) Any proposed questions for voir dire by the judge;

11
12 (2) Any proposed jury questionnaires;

13
14 (3) The admissibility of various documents, photographs, audiotapes,
15 videotapes, CDs, DVDs, physical objects, and other tangible things
16 included in each party's exhibit list;

17
18 (4) Lists of witnesses, including expert witnesses;

19
20 (5) A statement of the case to be read to the jury or, if permitted, the brief
21 opening statements to the jury panel by counsel under rule 2.1034;
22

23 (6) Jury instructions and verdict forms;

24
25 (7) The length of trial;

26
27 (8) Any anticipated scheduling problems; and

28
29 (9) Other trial issues.
30

31 **(b) Stipulations**

32
33 After conferring, the parties should prepare stipulations on trial issues that
34 are not disputed. The parties should advise the court of any stipulations at the
35 trial management conference or, if no conference is set, before the
36 commencement of trial.
37

38 **Rule 3.1412. Motions in limine**

39
40 **(a) Purpose**

41
42 A "motion in limine" is a motion made in connection with the admissibility
43 of evidence at trial.

1 **(b) Requirements of motion**

2
3 A motion in limine must satisfy the requirements of rule 3.1112 and must
4 specifically identify the evidence that is the subject of the motion. In
5 addition, the motion must include a statement that the parties have conferred
6 regarding the motion.

7
8 **(c) Time for service**

9
10 All motions in limine must be served on all other parties and submitted to the
11 court in accordance with Code of Civil Procedure section 1005. For the
12 purpose of this provision, the hearing date for motions in limine is the date of
13 trial.

14
15 **(d) Impermissible uses**

16
17 (1) A motion in limine must not be used to obtain summary judgment or
18 the summary adjudication of issues. A motion for summary judgment
19 or summary adjudication may only be made in compliance with Code
20 of Civil Procedure section 437c and applicable rules.

21
22 (2) A motion in limine must not be used to obtain an order to try an issue
23 before the trial of another issue or issues. A motion for precedence of
24 issues may only be made in compliance with Code of Civil Procedure
25 section 598.

26
27 (3) A motion in limine must not be used to obtain judgment on the
28 pleadings. A motion for judgment on the pleadings may only be made
29 in compliance with Code of Civil Procedure section 438.

30
31 **(e) Deferred ruling; duty of counsel**

32
33 The court may defer ruling on a motion in limine and may order that no
34 mention or display of the matter that is the subject of the motion is to be
35 made in the presence of the jury, unless and until the court orders otherwise.
36 If the court so orders or if the motion is granted, it is the duty of counsel to
37 instruct associates, clients, witnesses, and other persons under their control
38 that no mention or display of the matter that is the subject of the motion be
39 made in the presence of the jury.

1 **Rule 3.1414. Witness lists**

2
3 Each party must serve on all other parties and submit to the court as provided
4 under rule 3.1406(b) a list of all witnesses, including expert witnesses, that the
5 party intends to call at trial, except for witnesses who are to be used solely for
6 impeachment or rebuttal.

7
8 **Rule 3.1416. Exhibit lists**

9
10 Each party must serve on all other parties and submit to the court as provided
11 under rule 3.1406(b) a list of all exhibits that the party intends to introduce at trial,
12 except those to be used for impeachment or rebuttal. Each exhibit must be
13 identified with particularity.

14
15 **Rule 3.1418. Use of depositions**

16
17 **(a) Time for service and submission**

18
19 A party that intends to use a deposition transcript, except for impeachment or
20 rebuttal, must serve a copy of the portion of the transcript that it intends to
21 introduce at trial on all other parties at least 20 calendar days before the trial
22 date. The portions of the transcript must be formatted in accordance with rule
23 3.1116.

24
25 **(b) Objections or counterdesignations**

26
27 Objections to the use at trial of a deposition transcript served under (a), and
28 the portions of any deposition transcripts that are being counterdesignated,
29 must be served on all parties at least 10 court days before the date of trial.

30
31 **(c) Submission to the court**

32
33 A party offering a deposition transcript must submit a copy of the portion of
34 the transcript that it intends to introduce at trial, together with any objections
35 received, to the court on the date of trial.

36
37 **(d) Originals to be lodged**

38
39 A party that intends to use a deposition transcript at trial, except for
40 impeachment or rebuttal purposes, must lodge the original deposition
41 transcript with the courtroom clerk no later than the date of trial.

1 **(e) Court approval of exceptions**

2
3 When the proponent of the use of a deposition transcript could not
4 reasonably have anticipated the need for the use of the transcript at trial and
5 so could not have complied with the time requirements under this rule, the
6 court may permit the use of the transcript at trial in the interests of justice
7 under such conditions as may be appropriate.

8
9 **Rule 3.1420. Video or audio presentations**

10
11 Any party that intends to present at trial audio, video, DVD, CD, or other similar
12 recorded materials containing a sound recording must prepare a written transcript
13 of the presentation and must serve it on all parties and submit it to the court along
14 with the audio, video, DVD, CD, or other similar recorded materials no later than
15 the date of trial. The transcript must be marked and filed as required under rule
16 2.1040.

17
18 **Rule 3.1422. Statement of the case to be read to the jury**

19
20 In a jury trial, the parties must prepare a brief, nonargumentative statement of the
21 facts of the case to be read to the jury at the beginning of the case. When the
22 parties confer under rule 3.1410, they must attempt to agree on a joint statement of
23 the case for the court to read to the jury. Alternatively, if the court under rule
24 2.1034 permits brief opening statements by counsel to be presented to the jury,
25 counsel may prepare such statements instead of the joint statement to be read by
26 the court.

27
28 **Rule 3.1424. Trial briefs**

29
30 Each party may serve and file a trial brief. Also, the court may order parties to file
31 trial briefs. Trial briefs must be served and filed as provided under rule 3.1406(b).

32
33 **Rule 3.1426. Jury instructions**

34
35 **(a) Service and submission of proposed instructions**

36
37 Before trial, each party must exchange itemized lists of any proposed
38 standard introductory instructions and of any proposed standard jury
39 instructions, and must exchange copies of any proposed special
40 preinstructions and of any proposed special jury instructions, as provided
41 under rule 3.1406(a)–(b). On the date of trial, each party must serve on all
42 other parties and must submit to the court all of the party’s proposed
43 introductory instructions, proposed preinstructions, proposed standard jury

1 instructions, and proposed special jury instructions in the format prescribed
2 in rule 2.1055.

3
4 **(b) Meet-and-confer; preparation of instructions and verdict form**

5
6 The court may order the parties to meet and confer, including if necessary in
7 person, concerning the proposed jury instructions and to prepare:

8
9 (1) A set of joint introductory instructions, preinstructions, and standard
10 and special jury instructions, and, if necessary, a separate set of
11 introductory instructions, preinstructions, and standard and special jury
12 instructions as to which there is disagreement; and

13
14 (2) A joint verdict form.

15
16 **Rule 3.1428. Glossary**

17
18 If the case involves technical or unusual vocabulary, the party or parties that will
19 be using this vocabulary must prepare, exchange, and submit to the court a special
20 glossary as provided under rule 3.1406(a)–(b).

Item SP07-22 Response Form

Title: Civil Pretrial Rules (amend Cal. Rules of Court, rules 3.250, 3.727, 3.728, and 3.1112, and adopt rules 3.1400, 3.1402, 3.1404, 3.1406, 3.1408, 3.1410, 3.1412, 3.1414, 3.1416, 3.1418, 3.1420, 3.1422, 3.1424, 3.1426, and 3.1428)

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

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

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

Fax: (415) 865-7664 Attention: Camilla Kieliger

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

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.