



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 24, 2011

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Title	Agenda Item Type
Civil Trials: Proposed Consent Order for Expedited Jury Trials	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve forms EJT-020 and EJT-020A	July 1, 2012
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	December 16, 2011
	Contact
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### Executive Summary

The Civil and Small Claims Advisory Committee recommends that the council approve two forms that parties may use to memorialize their agreement to take part in a civil expedited jury trial and to present that agreement to the court: *[Proposed] Consent Order on Expedited Jury Trial* (form EJT-020), which includes all the elements that statute mandates be included in such an agreement, and *Attachment to [Proposed] Consent Order on Expedited Jury Trial* (form EJT-020A), which includes a checklist of other items relating to an expedited jury trial on which the parties may agree.

### Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve new forms *[Proposed] Consent Order on Expedited Jury Trial* (form EJT-020) and *Attachment to [Proposed] Consent Order on Expedited Jury Trial* (form EJT-020A), effective July 1, 2012, for use in initiating expedited jury trial procedures.

The forms are attached at pages 7–10.

## Previous Council Action

In 2010, the Judicial Council adopted and approved procedures for civil expedited jury trials, an alternative, streamlined method for handling civil actions to promote the speedy and economical resolution of cases and conserve judicial resources. The procedures became effective on January 1, 2011, enacted in statute (Assem. Bill 2284 [Evans]; Stats. of the 2010, ch. 674) and adopted as rules 3.1545–3.1552 of the California Rules of Court.

## Rationale for Recommendation

The civil expedited jury trial procedures were 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. An expedited jury trial is heard by a smaller jury, and the goal is to complete the trial in one or two days. Participation is voluntary. The decision of the jury is binding on the parties, and appeals and posttrial motions are strictly limited. Key features of the expedited jury trial model are its voluntary nature and 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.

### *[Proposed] Consent Order on Expedited Jury Trial (form EJT-020)*

The expedited jury trial procedures are initiated when the consent of the parties is submitted to the court in the form of a proposed consent order granting an expedited jury trial that (1) is signed by the parties and their counsel; and (2) includes representations that the parties and their insurers have been informed of the applicable rules and procedures and given the Judicial Council information sheet regarding expedited jury trials, that the parties agree to the procedures, and that the insurers do not object to them. (§ 630.03(a), (e).)<sup>1</sup> The committee<sup>2</sup> has developed the form consent order to facilitate parties' compliance with the statutory requirements and the court's review of their compliance.

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<sup>1</sup> All statutory references are to the Code of Civil Procedure unless otherwise noted.

<sup>2</sup> The advisory committee had the assistance of the Small Civil Cases Working Group in developing this recommendation. The Small Civil Cases Working Group is chaired by Judge Mary Thornton House (Superior Court of Los Angeles County) and includes the members of the Small Claims and Limited Case Subcommittee of the Civil and Small Claims Advisory Committee. The group members also include Judge Stephen M. Moloney (Superior Court of Los Angeles County), Commissioner Douglas G. Carnahan (Ret., 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. Suzanne Martindale (Consumers Union), Ms. Kimberly Stone (Civil Justice Association of California), and Mr. Steve Suchil (American Insurance Association).

By statute, a proposed consent order is required to contain representations concerning the informed consent of the parties and their insurance carriers and the parties' agreement that (1) they generally waive their rights to appeal and to make posttrial motions; (2) each side has three hours in which to present its case; (3) the jury is to be composed of eight or fewer jurors with no alternates; (4) each side is limited to three peremptory challenges, except as provided; and (5) pretrial and trial matters will proceed under the rules set forth in the act unless the parties expressly agree otherwise in the proposed consent order. (§ 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).)

The form for the proposed consent order contains all the mandatory elements required for agreement to an expedited jury trial. The form has been developed as a single form to be signed by all the parties. The form begins with a box containing instructions to that effect—that it is to be signed by all parties—and instructions that the parties should, before completing the form, review the *Expedited Jury Trial Information Sheet* (form EJT-010-INFO).

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

Item 3 is used to indicate whether any party to the agreement is a minor, an incompetent person, or a person under a conservatorship, categories of parties for which the statute requires that the court must approve the use of EJT procedures and any high-low agreement such parties enter into.<sup>3</sup>

The form also contains the required assertions: that the parties agree to take part in a shorter trial of only three hours per side and with a smaller jury, to be limited to only three peremptory challenges, and to waive their right to appeal and to most posttrial motions. (Item 4a–c). See § 630.03(e)(2) (B), (C), & (D).) It includes an agreement that the case will proceed under the provisions of the Expedited Jury Trial Act (which incorporates other provisions of the Code of Civil Procedure and Evidence Code) and the rules of court concerning expedited jury trials, unless the parties stipulate otherwise, and an item in which to describe such stipulation or to indicate that it is attached. (Items 4e and 9; see §630.03(e)(2)(E).)

Except for the statutorily mandated elements listed above, the parties may agree to modify the rules and procedures that will apply to their particular trial. Any such agreements must be stated

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<sup>3</sup> Similar approval is required if any party to the expedited jury trial is a self-represented litigant. Because any such litigant will be identified in item 2c, that category is not repeated in item 3.

in the proposed consent order. (See rule 3.1547(b).) Item 6 of the proposed consent order states that the parties understand that any such optional agreement must be included in the proposed order form or as an attachment.

Item 7 references the possibility of high-low agreements. The parties are not to indicate on the form whether such an agreement exists (such information need not be presented to the court in most cases<sup>4</sup>) but the item is included as a reminder that such agreements are possible in expedited jury trial cases. The advisory committee believes it is important to remind parties to consider such agreements and thus included this statement on the form.

Signature lines are provided for each party, as required by statute, and for the attorneys for each party. Finally, a signature line for a judicial officer is provided, under checkboxes in which the judicial officer may indicate whether the order is issued or is denied because the court found good cause for the action not to proceed as an expedited jury trial.

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

Many participants may find participation in an expedited jury trial is attractive because they can determine many of the trial procedures and evidentiary rules, tailoring them to the issues at hand. Parties are also encouraged to enter into agreements because they serve to streamline the method of presenting evidence and other procedures designed to have the case concluded more quickly.

The attachment form may be used by the parties to describe any such agreements that they have reached to modify the rules and procedures that will apply to their particular trial. The form has a dual purpose. First, it is intended to serve as a checklist to remind the parties and their counsel of the various agreements that they should be exploring to help streamline the trial. Second, it can be used to memorialize the terms of agreements reached between the parties so that the terms may be included in the proposed consent order. Each of the subjects listed in rule 3.1547(b) are possible areas of agreement to be included in the consent order and hence is listed on the form. There is also a blank item for any other topic the parties agree on, as well as a space to indicate whether additional attached pages contain other agreements or provide more details on the terms of the agreements identified in form EJT-020A.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments received on circulated forms**

The proposal was circulated for public comment in spring 2011. Comments were received from two superior courts<sup>5</sup> and two State Bar committees.<sup>6</sup> Both the Superior Court of Monterey County and the State Bar's Committee on the Administration of Justice agreed with the proposal

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<sup>4</sup> Only in cases involving minors or dependent adults or cases brought by self-represented litigants is a court to review any high-low agreement.

<sup>5</sup> The Superior Court of Sacramento County also reviewed the proposal but had no comments.

<sup>6</sup> A chart summarizing the comments and the committee's responses is attached at pages 11–12.

as circulated. The Superior Court of San Diego County and the State Bar’s Litigation Section agreed in general with the proposal but suggested minor modifications, which are discussed below.

The Litigation Section made two suggestions. First, in light of the requirement that the court approve the use of expedited jury trial procedures in cases involving self-represented litigants or minors, incompetent persons, or persons with conservators, the commentator proposed adding an item to the proposed consent order form to indicate to the court whether such a party was in the case. Item 2 already identifies self-represented litigants, but the committee concluded that item 3 should be added to the form to identify to the court other cases in which further review will be required.

Second, that commentator suggested modifying certain items on the attachment form to more closely parallel the language in the other items on that form. The proposed modifications have been made.

The Superior Court of San Diego County noted that the proposed consent order as circulated did not include an item to allow a judicial officer to deny the proposed order and suggested that it would be clearer if the form included checkboxes to indicate grant or denial. The statute provides that a court shall either issue the consent order or “deny the proposed consent order in its entirety” if there is good cause why the action should not proceed through an expedited jury trial. (See § 630.03(f).) The committee agreed with the commentator, and the form has been modified to include the option of denying issuance of the order.

### **Alternative of taking no action**

The committee considered the alternative of not recommending forms for the proposed consent order, instead leaving it up to the parties to draft an individual proposed consent order in each case, incorporating their agreements. However, the committee concluded that standardized forms would assist both the parties and the court in initiating expedited jury trials, which are expected to streamline trials and hence make them less costly to courts as well as parties. Use of the form will ensure that all the required elements of an agreement to take part in an expedited jury trial are included in the proposed consent order and hence facilitate the court’s review. The forms are optional, so parties and courts are free to draft individualized consent orders in cases in which they or the court deems it appropriate.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposed forms will be prepared by litigants and so have little cost impact on the courts. Should the court choose to make copies of the forms available to parties, the court may incur printing or copying costs.

## **Attachments**

1. Form EJT-020, at pages 7–8
2. Form EJT-020A, at pages 9–10
3. Chart of comments, at pages 11–12



PLAINTIFF/PETITIONER: _____	CASE NUMBER:
DEFENDANT/RESPONDENT: _____	

5. Each party understands that only three-quarters of the jury need to agree in order to reach a decision, unless otherwise agreed by the parties.
6. Each party understands that the parties may make additional agreements concerning the trial in terms of applicable rules, number of witnesses, types of evidence, or other matters in order to shorten the length of time in which the matter will be tried to the jury. Any such agreements are described in item 9 below or in *Attachment to [Proposed] Consent Order for Expedited Jury Trial*.
7. Each party understands that the parties may enter a confidential high-low agreement specifying a minimum amount of damages that a plaintiff is guaranteed to receive from defendant and a maximum amount that defendant will be liable for, regardless of the verdict returned by the jury.
8. Each party understands that any award of attorney fees and costs will be decided by the court.
9.  Other agreements  are described in attached form EJT-020A.  are as follows:

10. Total number of pages attached: \_\_\_\_\_. The consents below apply to all the agreements described in those pages.

**After reading the above and any attachments, I hereby consent to the expedited jury trial procedures for this case as stated in these documents.**

**PARTIES**

Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	▶ _____ (SIGNATURE OF PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	▶ _____ (SIGNATURE OF DEFENDANT)
Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	▶ _____ (SIGNATURE OF <i>(describe party)</i> ):

**ATTORNEYS**

Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	▶ _____ (SIGNATURE OF ATTORNEY FOR <i>(describe party)</i> ):

- It is so ORDERED.  
 The proposed consent order is DENIED for good cause.

Date: \_\_\_\_\_  
JUDICIAL OFFICER



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**ATTACHMENT TO  
[PROPOSED] CONSENT ORDER FOR EXPEDITED JURY TRIAL**

*(This attachment may be used with form EJT-020.)*

As part of the *[Proposed] Consent Order for Expedited Jury Trial*, the parties have agreed to the following *(check all items on which agreements have been reached and describe the agreements in detail. If more space is needed for any item, use form MC-025 and complete item 15 below):*

1.  Modifications of the timelines for pretrial submissions required by rule 3.1548 of the California Rules of Court *(describe timeline):*

2.  Limitations on the number of witnesses per party, including expert witnesses *(describe):*

3.  Modifications of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony by such witnesses *(describe):*

4.  Allocation of time periods stated in rule 3.1550 of the California Rules of Court, including how arguments and cross-examination may be used by each party in the three-hour time frame *(describe):*

5.  Agreement as to any evidentiary matters, including any stipulations or admissions regarding factual matters *(state such matters in detail):*

6.  Agreement about what constitutes necessary or relevant evidence for a particular factual determination *(describe):*

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

7.  Agreement about admissibility of particular exhibits or demonstrative evidence presented without the legally required authentication or foundation (*describe*):
8.  Agreement about admissibility of video or written depositions and declarations (*describe*):
9.  Agreement about any other evidentiary issues or the application of any of the rules of evidence (*describe*):
10.  Agreement to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury (*describe*):
11.  Agreement concerning the time frame for filing and serving motions in limine (*describe*):
12.  Agreement that fewer than eight jurors may hear this case (*describe*):
13.  Agreement concerning the number of jurors required to reach a verdict in this case (*describe, including any agreement regarding loss of juror after trial starts*):
14.  Other agreements (*describe*):
15.  Form MC-025 is attached, with further details concerning items (*list items*):

**SPR11-24**

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

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
1.	Orange County Bar Association John Hueston, President	A	No specific comment.	No response required.
2.	State Bar of California, Committee on Administration of Justice By Saul Bercovitch	A	CAJ supports this proposal	No response required.
3.	State Bar of California, Litigation Section, Rules and Legislation Committee By Reuben A. Ginsburg	AM	<p>The Rules and Legislation Committee agrees with the proposal, but suggests the following changes.</p> <p>Court approval is required for use of an expedited jury trial by a self-represented litigant, a minor, an incompetent person, or a person for whom a conservator has been appointed. (Code Civ. Proc., § 630.03, subd. (d).) To ensure that the court is informed when a party falls into one of these categories before approving a proposed consent order, the Committee suggests that questions be added to item 2 of the consent order form (EJT-020), or elsewhere on the form, asking whether any party falls into one of these categories.</p> <p>Also, the Committee suggests that the language in items 5 and 6 on the attachment (form EJT-020A) should be modified to more closely parallel items 7 through 13 other items, as follows:</p> <p>“5. <del>Any a</del> <u>Agreements</u> on evidentiary matters agreed to by the parties, including any stipulations or admissions regarding factual</p>	<p>The committee notes that item 2c already provides information as to whether a party is self-represented. The form has now been modified to include a new item 3 to inform a court if a party is within another category for which specific court approval is required.</p> <p>The form has been modified in light of this comment.</p>

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

**SPR11-24**

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

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			<p>matters (<i>state such matters in detail</i>):”</p> <p>“6. <del>Any a</del>Agreements about what constitutes necessary or relevant evidence for a particular factual determination (<i>describe</i>):”</p>	
4.	Superior Court of Monterey County By Minnie Monarque Deputy Court Executive Officer	A	No specific comments	No response required.
5.	Superior Court of San Diego County By Michael Roddy, Executive Officer	AM	EJT-020: What if the judicial officer denies the proposed consent order? It would be more efficient and make the order clearer to have a checkbox for both, granted and denied.	The form has been modified in light of this comment, with checkboxes added.

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