

Court Trial Rules
Courtroom 41
Ventura County Superior Court
Judge Kevin G. DeNoce

The following practices and procedures are to be followed in conducting civil court trials before Judge Kevin G. DeNoce. Counsel are ordered to read and adhere to these rules. **The court requires that trial counsel sign a copy of these rules acknowledging that you have read them and file a signed copy of these rules with the court (or email a signed copy to the court) five court days prior to the first day of trial.** You may email a signed copy to the court at courtroom41@ventura.courts.ca.gov.

Court Trial Court Hours:

Court trials are conducted from 10:00 a.m. to 4:00 p.m., Tuesday through Friday. Trials are not in session on Mondays since that is a law and motion day for the court. The court recesses from noon to 1:30 p.m. Counsel are expected to arrive in the courtroom ten minutes before each session is to begin (9:50 a.m. and 1:20 p.m.) **Once trial begins, counsel should expect to be in session Tuesday through Friday from 10:00 a.m. to 4:00 p.m. until the trial is completed.** The court expects that there will not be interruptions (down time) in the trial and that each counsel will have their witnesses ready to avoid unnecessary breaks and down time.

Counsel's Duty to Meet and Confer 7 days Prior to Trial:

At least 7 calendar days prior to the first day of trial or as soon as notified of trial assignment to Judge DeNoce, counsel are ordered to meet and confer telephonically (1) to prepare a joint witness list; (2) to identify legal and factual issues which may be resolved through stipulation; (3) to identify exhibits which may be admitted into evidence by way of stipulation; (4) to ensure compliance with *Code of Civil Procedure* section 2025.340(m) concerning the use of audio or video recordings of depositions; (5) to prepare exhibit binders and deposition transcripts for the court; and (6) to discuss scheduling issues and arrive at a reliable time estimate for the trial to be conveyed to court. .

Trial Documents to be Served, Filed, & emailed 5 Calendar Days Before Trial:

At least 5 calendar days prior to the first day of trial, the parties shall serve and file (with the Judicial Assistant in courtroom 41), the documents listed below. If you are called in for trial off of the trailing list or otherwise notified less than 5 days of trial commencement, please provide the below documents to the Court ASAP:

- 1.) A Trial Brief not exceeding 20 pages which identifies the claims and defenses subject to litigation; the major legal issues (with supporting points and authorities); the relief claimed and calculation of damages sought. In addition to filing your trial brief, please email a copy to the court at: courtroom41@ventura.courts.ca.gov

- 2.) **Motions in limine:** Counsel are permitted to file no more than 10 motions in limine on each side. If you believe you have good cause to file additional motions in limine you must file a supporting motion and declaration. **The parties are ordered to create a working courtesy copy of all motions in limine (motion, opposition, reply) in three-ring binders which must be lodged with the court 3 court days prior to the first day of trial in addition to filing hard copies.** Before filing motions *in limine*, the parties shall meet and confer in an effort to (1) reach stipulations resolving disputes over the admissibility of evidence and (2) limit the contested motions *in limine* to a manageable number for the Court to decide. Please remember that motions asking the court to exclude large categories of evidence (e.g., “all evidence not disclosed in discovery”) are not appropriate for adjudication *in limine*. The Court cannot decide whether a party unfairly withheld information in discovery until it receives an offer of specific evidence, an objection to that evidence, the discovery requests asking for the specific evidence, and the objections raised by the responding party. Please also recognize that in many cases, the Court is not in a position, at the outset of trial, before hearing preliminary or foundational evidence, to issue an order excluding evidence *in limine*. When such issues arise during trial, please file a bench brief addressing the evidentiary issue rather than a motion *in limine*. In addition to filing your motions *in limine*, please email a copy to the court at: courtroom41@ventura.courts.ca.gov
- 3.) **Joint Witness List:** The parties shall file a joint list of all witnesses that each party intends to call. The joint witness list shall identify each witness by name, each expert witness, the expected length (in tenths of an hour) of the direct and cross examination of each witness, and any potential scheduling problems or special requirements. Please total the number of hours so that the Court can estimate the total length of trial. The court may preclude the testimony of a witness not listed in the joint witness. In addition to filing a Joint Witness List, please email a copy to the court at: courtroom41@ventura.courts.ca.gov
- 4.) **Jury/Legal Instructions:** Although jury instructions will not be used in a court trial, it is helpful to the court for counsel to file a list of CACI instructions that state the law applicable to the court trial. If there are no standard jury instructions that cover an issue of applicable law, please provide the equivalent of a jury instruction that sets forth the elements, etc., with supporting legal authorities. To the extent that there may be a dispute between the parties as to applicable law, this procedure will trigger an analysis by the court. If beneficial to the parties, the court can rule on such disputed issues of law at the outset of the trial in order to assist the parties in presenting evidence and potential case resolution.
- 5.) **Definitions for Technical Terms:** If there are technical terms which will be used by the witnesses and/or attorneys, it would be helpful to the court and court reporter to have a list of those terms with the correct spelling and definitions. A list of technical terms with their correct spelling and definitions should be jointly prepared by the parties and provided to the court and court reporter prior to jury selection and motions in limine. The court requests that the parties attempt to agree on the definitions for such terms and inform the court as to whether there is a dispute regarding the meaning of any technical terms.

Documents to Be Lodged With The Court On The First Day of Trial:

- 1.) Trial Exhibit Binders: The parties shall jointly prepare, and be fully prepared to lodge with the court on the first day of trial, three sets of tabbed, internally paginated and properly marked exhibits, organized numerically in three-ring binders (a set for the judge, the Judicial Assistant, and for the witness stand). The parties shall mark non-documentary exhibits and insert a simple written description of the exhibit behind the corresponding numerical tab in the exhibit binder.
- 2.) Transcripts of Depositions: Copies of deposition transcripts which may be read or referred to at trial must be lodged with the court on the first day of trial. The court will need to have a copy of any transcript used for impeachment or other purposes.
- 3.) Each party must provide the court with a separate list of your retained experts, non-retained experts, and treating physicians who may testify, and categorize the witnesses in accordance with these designations.

Court Reporter Services:

The parties are encouraged to provide court reporter services for all evidentiary portions of the trial. In the absence of a court reporter, the parties will have an insufficient record upon which to litigate an appeal. **The Court requests that counsel provide a court reporter that has “real time” capability since the court uses a running transcript from which to prepare a decision.**

Use of Publications, Articles, Expert Treatises, and Deposition Transcripts at Trial:

If pursuant to *Evidence Code* section 721, subdivision (b)(2) or (b)(3), a party seeks to introduce a publication or reference the content of a publication in questioning a witness, a noticed motion supporting such use must be filed prior to the commencement of trial. This advance notice and motion requirement does not apply to publications used pursuant to *Evidence Code* section 721, subdivision (b)(1). In questioning an expert witness, "case specific" information/hearsay may not be solicited as substantive evidence unless it has been independently admitted. (See, *People v. Sanchez (2016) 63 Cal.4th 665, 676-679.*) If you wish to have an expert reference "case specific" hearsay information in his/her testimony, or you wish to reference "case specific" information in your questioning of an expert, absent a stipulation, such evidence should be admitted into evidence prior to its use.

If pursuant to *CCP* section 2025.620, a party seeks to introduce a deposition transcript at trial other than of a party, a noticed motion supporting such use must be filed prior to the commencement of trial.

Stating Objections During the Trial:

The court does not permit speaking objections. Simply state the grounds for your objection, i.e., hearsay, lack of foundation, etc. Counsel objecting on “*Kennemur*” grounds is obligated to give advance notice of such objection and provide the court with a sufficient record to rule on the objection as soon as counsel reasonably anticipates that such an objection may be forthcoming. Counsel opposing a *Kennemur* objection has the burden of showing the court where in the deposition/declaration the expert disclosed the opinion being objected to. Counsel should be mindful that the court is not in a position to know whether an

expert opinion was disclosed prior to trial unless counsel provides the court with a sufficient record for the court to make that determination.

Witnesses:

Counsel must have sufficient witnesses present each day of trial to avoid delay. **Each counsel shall notify (by way of email) the court and opposing counsel by 6 p.m. the evening before, as to what witnesses will be called the following day except for witnesses offered solely for impeachment.** Failure to follow this rule may result in exclusion of any witness not so disclosed. Counsel are expected to accommodate each other when a need arises to call a witness out of order.

The standing order of the court is to exclude witnesses (including experts) from the trial, unless counsel request otherwise. Counsel are expected to inform witnesses of this order. Counsel must also advise their witnesses not to discuss their testimony with any other witness during the trial, including after the witness testifies.

Questioning of witnesses shall be done from outside the well and away from the witness stand unless necessary to cover exhibits or diagrams being referenced by the witness. Before approaching a witness, counsel should ask for the court's permission. Counsel should inquire of the court before approaching the witness stand. Counsel should promptly return to counsel table once it is no longer necessary to be beside the witness. Do not admonish a witness while the witness is testifying; you may request that the court admonish the witness.

Use of Exhibits During Trial:

Although the court requests that exhibits be pre-marked, counsel should only mark as exhibits items you intend to move into evidence. Do not mark numerous pages as an exhibit if you only intend to move some of those pages into evidence. Stated otherwise, only mark as an exhibit the pages that you will be moving into evidence. Electronic exhibits (CDs of documents, etc.) cannot be admitted in place of hard copies. The Court will need a hard copy of exhibits for Court and Judicial Assistant and counsel must provide them to the Court on the first day of trial. When counsel wishes to use an exhibit not produced and marked at the commencement of trial, counsel should disclose the exhibit to opposing counsel and provide it to the judicial assistant prior to its use so an exhibit tag can be attached to it.

Once an exhibit is marked, it shall not leave the courtroom regardless as to whether it is received into evidence. At each break and at the end of the day, all marked exhibits are to be handed back to the judicial assistant to ensure that they do not get lost or mistakenly taken out of the courtroom by counsel or a witness.

Evidentiary Stipulations:

If the parties intend to enter into a stipulation regarding the admissibility of evidence, whether business record foundation need be established, etc., the parties should memorialize the stipulation in writing and file it with the Court. It is not uncommon for the parties to discover in the midst of trial that there was not a "meeting of the minds" as to exactly what was stipulated.

To avoid this possibility, and to provide the Court with the authority to enforce an evidentiary stipulation, it must be memorialized in writing and provided to the Court. The written stipulation should also state that the parties agree that the Court can enforce the stipulation such as by overruling any objection to evidence stipulated to be admissible.

Persons Assisting and Associated With Counsel During Trial:

Other than the parties and trial counsel, no persons are permitted in front of the bar separating the audience from counsel table unless expressly permitted by the court. If “assistants” for either side wish to sit at counsel table, please provide the name of your assistant to the court clerk and introduce your assistant to the court. Assistants and co-counsel that are sitting at trial counsel table should limit coming and going from the courtroom during session.

Entering the Well:

Questioning of witnesses shall be done from outside the well and away from the witness stand unless necessary to cover exhibits or diagrams being referenced by the witness.

Unanticipated Issues That Arise During The Trial:

If unanticipated issues arise or if new motions need to be made during the trial (motions *in limine*, 402, foundation, etc.), both opposing counsel and the court shall be notified immediately as opposed to raising the issue when we are supposed to be back in session. If such a motion comes to mind after hours, opposing counsel and the court shall be notified after hours by email and all counsel shall be in court at 9:30 a.m. on the following court day to address the matter. All counsel are ordered to exchange email addresses and telephone numbers so they can confer both during and after court hours.

“DOE” Defendants:

The court will, without further notice, dismiss all fictitiously named defendants at the close of the evidence.

I have read and understand the foregoing and agree to be bound by the above rules.

Counsel (print)
Plaintiff/Defendant

Signature

Date