

Civil Jury Trial Memorandum

Courtroom 41

Ventura County Superior Court

Judge Kevin G. DeNoce

The following practices and procedures are to be followed in conducting civil jury 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 email a signed copy of these rules to the court before the pre-trial conference.** You may email a signed copy to the court at courtroom41@ventura.courts.ca.gov

Trial Court Hours:

Jury 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 fifteen minutes before each session is to begin (9:45 a.m. and 1:15 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. If counsel cannot commit to this schedule, it must be brought to the court's attention before jury selection begins.** The court expects that there will not be interruptions (down time) in the trial and that each counsel will have their witnesses ready so that the jury is not waiting. Do not expect the court or jury to wait if witnesses are late.

Counsel's Duty to Meet and Confer Prior to the Pre-Trial Conference:

Judge DeNoce conducts a pre-trial conference two weeks prior to the trial date. Prior to the pre-trial conference, counsel are ordered to meet and confer telephonically (1) to prepare a joint witness list and joint statement of the case; (2) to identify motions in limine and issues which can 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 use of audio or video recordings of depositions, where applicable; (5) to provide a list of jury instructions to the court; (6) to provide a jury verdict form to the court; (7) to prepare exhibit binders and deposition transcripts for the court; and (8) to discuss scheduling issues and arrive at a reliable time estimate for the trial to be conveyed to the jury panel.

Trial Documents To Be Provided to the Court at the Pre-Trial Conference:

The parties are required to appear in courtroom 41 for a pre-trial conference two weeks prior to the trial date. Counsel may appear by CourtCall at the pre-trial conference. The purpose of the pre-trial conference is to discuss whether counsel will be announcing ready for trial, the court's availability to commence the trial on the trial date, and whether counsel have prepared the necessary documents that the court requires be prepared prior to the trial date, including motions in limine, a statement of the case, joint witness list, proposed jury instructions, proposed verdict forms, proposed juror questionnaire, etc. In addition to emailing the court copies of these documents, these documents, in particular, motions in limine, must be brought to the pre-trial

conference in hard copy format – printed out and in binders if necessary. In cases with significant motions in limine, this procedure permits the court to work on such motions in advance of the trial date so as to avoid delaying jury selection on the trial date. The failure of a party to provide these documents to the court at the pre-trial conference will operate as a waiver of that party's right to request that the trial commence on the trial date and a continuance of the trial date.

Email documents to the court by using this address: courtroom41@ventura.courts.ca.gov
The documents which must be provided to the court (by way of email and hard copies) and opposing counsel at the pre-trial conference include the following:

- 1.) **Trial Briefs:** Trial briefs must be brought to the pre-trial conference and provided to the court and opposing counsel. Trial briefs shall not exceed 20 pages and must contain a brief summary of the facts, the claims and defenses subject to litigation; the major legal issues (with supporting points and authorities); and the relief claimed.
- 2.) **Motions in limine:**
 - a.) **Motions in limine must be emailed to the court and brought to the pre-trial conference in hard copy format and provided to the court and opposing counsel.**
 - b.) **Oppositions to motions in limine must be emailed to the court and opposing counsel seven calendar days after the pre-trial conference no later than 4 p.m.**
 - c.) **Replies to motions in limine must be emailed to the court and opposing counsel nine calendar days after the pre-trial by no later than 4 p.m.**
 - d.) **The parties are ordered to create a working courtesy copy of all motions in limine, oppositions, and replies, and organize them in three-ring binders which must be lodged with the court ten calendar days after the pre-trial conference (the Thursday prior to the trial date).**
 - e.) Before and after 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.
 - f.) 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.
- 3.) **Joint Jury Statement:** **For jury trials only, the parties shall email the court a joint statement of the case to be read to the jury panel at the outset of jury selection. This statement should be a neutral, concise factual statement of the case not exceeding two pages.** (See, Ventura County Superior Court Rules, Rule 8.12(G).) Alternatively, the parties may agree to provide Mini-Opening Statements (five minutes or less per side).
- 4.) **Joint Witness List:** The parties shall email the court 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.

- 5.) **Jury Instructions: A list of all jury instructions requested by all parties along with a full content copy shall be provided to the court in hard copy format at the pre-trial conference and emailed to the court on such date. If a joint list of jury instructions cannot be agreed upon, each party must file a separate list of instructions. In providing jury instructions to the court, counsel should make any proposed substantive additions, select appropriate gender, and insert appropriate names, **BUT NOT REMOVE ANY OPTIONAL (BRACKETED) language from the CACI instructions.** This is to insure that opposing counsel and the court do not miss any optional language that the court/opposing counsel believe should be included. These complete instructions must be emailed to the court prior to commencement of the trial. By emailing all jury instructions to the court along with the proposed verdict form, the court can make changes to these in the courtroom after input from counsel. A copy of the final jury instructions and verdict form will then be emailed back to counsel prior to closing arguments.**

The court generally does not pre-instruct on substantive issues of law. If counsel desires to have the court pre-instruct on an area of law or if counsel wishes to question prospective jurors regarding any legal principles, notice shall be given by way of motion filed and served at least five (5) court days prior to the commencement of trial.

- 6.) If there is a request to use a written jury questionnaire, a copy must be provided to the court and opposing counsel at the pre-trial conference and also emailed to the court. Any proposed questionnaire must be at least 12 point font and not exceed 15 pages and include a declaration under penalty of perjury at the end for jurors to sign.
- 7.) **Jury Verdict Form: At the pre-trial conference, counsel for all parties must provide the court with a proposed verdict form. Said verdict form should be emailed to the court and brought to the pre-trial conference in hard copy format. If the parties cannot agree on a joint verdict form, each party must submit their own proposed verdict form prior to jury selection.** By providing the court with an electronic/emailed copy, changes to the verdict form can be made in the courtroom if necessary. In emailing the court, always remember to copy all parties/counsel on the email so as to avoid any *ex parte* communications with the court.
- 8.) **Estimated Trial Length: At the pre-trial conference, counsel must provide the court with an accurate time estimate for the trial which takes into consideration time for jury selection, presentation of evidence, closing argument, any potential bifurcated phase, and at least one day of deliberations. This time estimate should also take into consideration that trial will only be in session Tu-Fr 10-12, 1:30-4, and not in session on Mondays.** In providing your time estimate, error on the side of a longer estimate in order to avoid losing jurors and a potential mistrial. Since the court prequalifies jurors for hardship,

the court needs this time estimate prior to the first day of jury selection in order to prepare a hardship declaration that will be sent to jury services the day before jury selection begins.

- 9.) 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. The parties should also consider whether they wish to stipulate that a list of agreed definition of technical terms may be provided to the jury at the outset of the case.

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 court, the Judicial Assistant and the witnesses). 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.
- 3.) If there are more than ten (10) potential witnesses that may be called at trial, provide 100 copies of a comprehensive (joint) witness list that can be passed out to the prospective jurors at the beginning of jury selection to determine if jurors know any of the witnesses.
- 4.) 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.

Jury Selection:

The court prequalifies jurors for hardship by having the jurors in the Jury Assembly room fill out a declaration indicating whether they can serve on a case of the anticipated length of this trial. This is done before the jurors are brought into the courtroom. Generally, the court brings a panel of 70 pre-qualified jurors into the courtroom at a time and does not use a “six pack” method. The court uses a PowerPoint during jury selection to inform jurors of their duties, admonitions, and the information set forth in CACI 100-114. The court also uses a standard Jury Questionnaire in its examination of prospective jurors.

In conducting voir dire, counsel are reminded not to ask jurors “any question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law.” (CCP section 222.5.) The court will take challenges for cause at sidebar (or otherwise outside the hearing of the jury).

Court Reporter Services:

The parties are encouraged to provide court reporter services for all evidentiary portions of the trial and jury instruction discussions. In the absence of a court reporter, the Court will not be able to provide “read back” of testimony if requested by the jury. **The Court requests that counsel provide a court reporter that has “real time” capability.**

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 conclusion of jury selection. 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 conveyed to the jury 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 conclusion of jury selection.

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. If counsel wishes to argue about a ruling on an objection, it will be done at the bench or on the record outside the presence of the jury. Objections made before the jury shall state the legal basis only. Do not argue objections in the jury’s presence unless invited by the court. [See Ventura County Superior Court Rules, Rule 8.12(C)(2).] **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. Counsel should not expect the court to keep a jury waiting while the court is asked to read a voluminous deposition in order to rule on an unnoticed *Kennemur* objection.

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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 the jury, Court, and Judicial Assistant and counsel must provide them to the Court on the first day of trial. Please give your exhibits to the Judicial Assistant prior to jury selection and have them pre-marked before jury selection is completed.

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.

In publishing/providing exhibits to the jury, they shall be handed to the bailiff who will provide the exhibit to the jury. Counsel should not display, project, etc., an exhibit to the jury which has not been admitted into evidence without prior approval of the court. Counsel using a document presentation system shall identify on the record by exhibit number an exhibit to be displayed before showing it to the jury.

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.

PowerPoints, Charts, Reenactments, Demonstrations & Visual Displays:

PowerPoints, slides, charts, and exhibits intended to be referenced in opening statements or closing arguments must be shown to opposing counsel at least thirty minutes prior to their presentation. Counsel must provide a hard copy of any PowerPoint to the court and opposing counsel at least thirty minutes before its use. Opposing counsel must inform the court at least fifteen minutes prior to its intended use, of any objection to a PowerPoint, slide, chart, or exhibit which is to be taken up outside the presence of the jury. **In order for there to be an appellate record as to what was displayed to the jury and what was objected to, counsel must provide the court with a printed hard copy of any PowerPoint or Chart which must be marked as a court exhibit before being presented in court.**

Documents, video, or photographs which counsel intends to display/project should be marked and moved into evidence prior to display/projection. No reenactment, experiment, graphic demonstration, comparison, exemplar, or physical display of a party or witness shall be conducted during the trial without giving at least one court day advance notice to the court and opposing counsel so that a hearing can occur outside the presence of the jury.

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 not come and go from the courtroom during session as it is distracting to the jury.

Counsel are to instruct their clients, witnesses, family members, and anyone else attending court with them, of motion *in limine* rulings, the rules of the court, how to behave on the witness stand, to pause for objections, not to argue with the questioner, and NOT to converse with jurors. Further, these persons are to be instructed by counsel that they are not to converse in any manner within hearing distance of the jurors.

Counsel will advise their clients, family members, friends and witnesses that head nodding, grimaces, eye rolling, and other unnecessary gestures in response to testimony, argument, or a court ruling will not be tolerated, and may result in the court giving a curative admonition to the jury.

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.

Opening statement and closing argument shall only be presented from behind your counsel table, the podium in the well, and the area of the well directly in front of the jury box. Opening statement and closing argument shall not be presented from the witness stand or beyond the bar in front of the jury box. Counsel shall not make contact with or pass the bar in front of the jury box or ask the jury any questions such as whether they can see a diagram, exhibit, chart, Powerpoint, etc.

Sidebar Conferences:

Sidebar conferences are not reported. A party wishing to memorialize any unreported proceedings “on the record” will, upon request, have the opportunity to do so outside the presence of the jury at a time designated by the court.

Unanticipated Issues That Arise During The Trial:

If unanticipated 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 matter first thing in the morning or afternoon shortly before the jury comes back. 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 9:00 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. Counsel should not expect to keep the jury waiting while seeking to litigate an unnoticed motion.

“DOE” Defendants:

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

Policy Concerning Food and Drink:

Counsel may consume drinks in the courtroom. Food is not permitted in the courtroom absent medical necessity.

Trial Attorneys' Duty While the Jury is Deliberating:

While the jury is deliberating, counsel and the parties are to be available to physically return to the courtroom within thirty (30) minutes of a telephone call in order to receive a verdict, answers questions of the jury, or provide read back of testimony. Please provide the clerk with a cell phone number where you can be reached.

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

Counsel (print)
Plaintiff/Defendant

Signature

Date