

Chance favors the prepared

Making the Expedited Jury Trial (EJT) work requires cooperation from both sides of the aisle


Cooper

By Miles B. Cooper

The lawyer finished rebuttal and sat down. He looked at his watch. Two hours and fifty-four minutes – for his opening, witnesses, and closing. Only six minutes shy of his three-hour time limit. He knew the expedited jury trial timing would be tight, but wow – that was *tight*. His estimates paid off. The only thing remaining – the jury's verdict.

Twice as important?

An occasional reader might be thinking, "This cat's getting senile. He just recently wrote about expedited jury trials (EJTs)." I did (May 2014). That column addressed the rules and EJT strategy considerations for California's eight-juror, shortened jury trial process. This column stresses working with opposing counsel and bringing the matter in on time and under budget.

Civility matters

If you and your opponent can't agree on whether the sun rises in the east, skip the EJT. It requires some agreements. You will disagree, sure. But if all your communication must be in writing and you're on a first-name basis with law and motion (that would be "Judge" instead of "Your Honor"), skip the EJT.

Use a joint trial statement

I am a big fan of federal court. In particular, I like the required joint submissions. I've started suggesting a state court variant to opposing counsel, with good results (I do this in all cases, not just EJTs). The joint statement is a pre-trial document with attachments. It includes the neutral statement, stipulations, expected evidentiary issues, a joint exhibit list, jury instructions (with a separate tab for objections), and the verdict form.

Starting a discussion about the joint trial statement forces the parties to organize the case well before trial. Judges appreciate it – it cuts down on administrative time and jury interruption.

•*Stipulations*

Everyone has standard motions in limine. Using demonstrative exhibits in opening, no reference to settlement discussions, no witnesses present in the courtroom until after they have testified. These should be sentences, not separate pleadings. There's further reason to agree – some places (Alameda County) have instituted a filing fee for each motion in limine. Agreeing saves money.

•*Evidentiary stipulations*

You can call all the treating doctors, with the accompanying expense. You can read their depositions (because that is *so* riveting). Or, you can create a bullet point document, admissible to the jury, that the parties agree that Dr. Schmidlap would say 1, 2, 3. Faster. Simpler. And unless your doctor is George Clooney (ER? Anyone that old?), you probably don't need the doctor.

•*Evidentiary issues*

Most EJTs don't have appellate-level evidentiary issues. If there's a problem, alert the judge in the joint statement. In the rare circumstance where it requires further briefing, do a motion in limine.

•*Witnesses*

Straightforward. List all the witnesses who may be called or referenced (preferably alphabetically by last name) so the judge can read their names to the panel.

•*Exhibit list*

A joint exhibit list is key. How many times have you been in trial, referring to a medical record as "Plaintiff's 32, or defendant's B." Critical to success: assemble medical records in chronologic order and make each visit a separate exhibit. Time-consuming. But much clearer when referencing exhibits. Attach the exhibit list to the joint statement.

•*Jury instructions*

Also straightforward. Do the work – use complete instructions instead of just a list. Don't assign this project, either. Jury instructions tell the jury how to apply law to fact. We all get rusty. Preparing jury instructions warms you up, a pre-trial stretch before you step into the ring. Know what you have to prove before you prove it.

Attach the completed instructions. If there are any disputed instructions, attach them separately. Then your jury instruction conference will be very short indeed.

•*Verdict form*

A lot of the time, the verdict form is not disputed. If there are competing forms, attach them separately.

Prepare your case in advance

EJT time limits are strict. Unless you plan everything out – your opening, your witness exams, and your closing, you will run out of time. Mark Twain said, "I didn't have time to write a short letter, so I wrote a long one instead." Planning everything in advance forces you to keep the content tight. And EJTs don't afford you the luxury of evening prep sessions – your next witness is coming whether you are ready or not.

The timing method

The little things trip us up. For an EJT, this means timekeeping. If you rely on the trial judge (many of whom have heard of EJTs but never seen one), you will find yourself in trouble. A simple chess clock is a fabulous tool. The timer on a smartphone also

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works. Whatever the method, know it and practice it in advance.

The jury's verdict

The lawyer did not have to wait too long. Expedited trial, expedited jury. Because the lawyer was organized, the case had gone in smoothly. Smooth enough that the jury understood the issue. An efficient win for a deserving client. And proof that the EJT process works.

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