



The Best Way to Present a Case under the New One-Day Trial Law

April 25th, 2011



The Expedited Jury Trial Act (Act; Code of Civil Procedure §§ 630.01 – 630.10, AB 2284), which went into effect in California on January 1, allows cases to be tried in a single day. It's really the first major overhaul of how a trial may be conducted in the State of California, and it offers tremendous opportunity for attorneys and their clients.

While designed for smaller cases, there is no actual limit on the amount that can be in controversy, and the main point is to allow the case to be tried in a single day. How do you get this done?

The parties must agree and stipulate as follows ([click here to download a stipulation template as a Word doc](#)):

- The jury is limited to eight or less, with only three peremptory challenges per side, and no alternates, which shortens jury selection.
- A waiver of right to appeal and post-trial jury motions (CCP § 630.08; Rule 3.1547(a)(1).)
- High/low agreements on damages are allowed but not required. (CCP § 630.01(b); Rule 3.1547(a)(2).)
- Each side has three hours per side for their case, including opening statement, cross-examination and closing argument. (Rule of Court 3.1550.) The use of stipulations and evidentiary summaries is encouraged. (Rules 3.1551(a), (c); 3.1552(a).)
- Traditional rules of evidence apply unless the parties stipulate otherwise. (CCP § 630.06(a).)

Taken together, the one-day trial allows a matter to be decided extremely quickly in front of a jury rather than taking up to a week or more. This is accomplished by encouraging the parties use stipulations and evidentiary summaries, and potentially stipulating to lessen the normal rules of evidence. The bill had a broad range of support from organizations as diverse as the America Insurance Association and the California Consumer Attorneys, and passed unanimously.

When I read about this procedure, my first thought was that it sounds exactly like all the mock trials I've done in the past, where we would put the entire case on in a half day for a jury panel and would do the majority of the presentation with PowerPoints, blow-ups of diagrams, exhibits and other graphics. Using visual aids is the only way to put on a case like this in such a short period of time and is clearly the best way as well.



The one-day trial allows the opportunity to really show the jury what the case is about by the use of graphics. This is a case that will be won or lost within the opening statement of the parties. Both sides will want and need a powerful opening that includes all the key facts of the case, since the jury will be most fresh, and it will all be over in a few hours anyway.

Under the Judicial Counsel Rules governing the proceedings, the rules require that 25 days before the trial, the parties exchange (1) trial witness lists, (2) exhibit list, (3) copies of recorded materials, (4) lists of depositions, (5) motions in limine, (5) proposed instructions, (6) proposed jury verdict forms and juror questionnaires. (Rule 3.1548(b).)

Imagine that you have prepared a fantastic PowerPoint presentation on liability and damages that incorporates all the key documents, graphics explaining all aspects of the case, and perhaps video excerpts of key testimony. This 25-day exchange is the time to provide opposing counsel with a printout of all the PowerPoint slides with the multimedia enhancements to obtain a stipulation to use all of them—not only in opening, but also in the case in chief and in closing as well.

If you provide all the required documents listed in Rule 3.1548(b) and all your killer visual presentation materials to opposing counsel, what do you think will happen? Some believe you would “tip your hand” to the opponent. I, however, believe your chance of settling the case in the best possible way increases dramatically. You have proven you’re ready to go to trial, and as we all know, those cases fully ready for trial are those that settle with with the best results.

Regardless of whether the case settles, however, the combination of an interesting, engaging multimedia presentation in both opening and closing will keep jury attention in this extremely compacted format. Using graphics to illustrate and summarize key points, and to tell the story of your case, also shows you believe in your case and are spending the time it deserves for your client.

Morgan Smith is the owner of Cogent Legal, a legal graphics and consulting firm that helps attorneys present their cases in the most clear, compelling and tactical way to achieve maximum results. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.