

## CIVIL TRIAL PROCEDURES FOR DEPARTMENT 9

### Judge Julia Alloggiamento

#### General

The Court's goal is to resolve cases in a professional, prompt fashion in accordance with the law. Counsel should be familiar with the Santa Clara County Bar Association's Code of Professionalism. The Court does not tolerate conduct that is unprofessional or which causes undue delay. Counsel shall always be civil and polite toward opposing counsel, witnesses, and court staff.

#### Court Reporters

As of January 1, 2018, the court does not provide court reporters for civil matters. If you wish for your trial to be reported, please be ready to privately retain a reporter in accordance with the court's published *Policy re: Privately Retained Court Reporters and Official Reporters Pro Tempore*.

#### Pretrial Submissions and Conference

Please review the Local Civil Court Rules pertaining to trial and related matters.

Unless otherwise ordered by the Court, counsel in civil **jury** trials shall provide the Court with the following **by 12:00 pm on the last court day before the date set for trial**: all *in limine* motions; exhibit lists (**\*exhibit lists should be provided in Microsoft Word format**), except impeachment exhibits; witness lists, except impeachment witnesses; jury instruction requests (see further discussion below); proposed verdict forms; any stipulations on factual or legal issues; statement of the case; trial briefs; and proposed special jury voir dire questions (if any). Please email a courtesy copy of all e-filed documents to the court (cc'ing all counsel). The department email is: [department9@scscourt.org](mailto:department9@scscourt.org)

Unless otherwise ordered by the Court, counsel in civil **court** trials shall provide the Court with the following **by 12:00 pm on the last court day before the date set for trial**: all *in limine* motions; exhibit lists (**\*exhibit lists should be provided in Microsoft Word format**), except impeachment exhibits; witness lists, except impeachment witnesses; any stipulations on factual or legal issues; statement of the case; and trial briefs. Please email a courtesy copy of all e-filed documents to the court (cc'ing all counsel). The department email is: [department9@scscourt.org](mailto:department9@scscourt.org)

The court may schedule a pre-trial conference to address any problems or unique circumstances that could impact trial procedures and scheduling, including unavailability of witnesses, *unavoidable* scheduling conflicts, or requests to call witnesses out of order.

Counsel should inform the Court if counsel believes an *in limine* issue will require an evidentiary hearing or if any unusual legal issue or evidentiary issue is anticipated during trial.

**Appearances are to be made in person**, with the exception that in certain limited circumstances, the Court will entertain a request for pretrial conference to be held remotely by teams (such as counsel is from out of the county, or finishing another trial, or there are unique trial date setting issues).

Counsel shall meet and confer in advance of the pretrial conference regarding factual stipulations on uncontroverted matters and place such stipulations in writing to be read into the record. Counsel is encouraged to waive authentication evidence on documents where authentication is not a significant issue.

**Originals** of all depositions that may be used during trial are to be lodged with the Clerk before trial begins.

*In limine* and other pre-trial motions are to be heard on the record prior to juror panel call. Counsel shall carefully advise their clients and witnesses about *in limine* rulings.

### **Jury Instructions**

A list of requested jury instructions (CACI) shall be submitted to the Court at the earliest possible time. Any non-CACI or pinpoint instructions shall be submitted in writing.

It is counsel's responsibility to ensure that an adequate record is made regarding objections to jury instructions.

### **Statement of the Case and Voir Dire / Hardships**

Before beginning voir dire, the Court will introduce parties and counsel to the jury panel. The Court will inform the jury of the expected length of trial based on counsel's good faith time estimates for trial. After that, the Court will read a neutral statement of the case (ideally agreed upon at the pretrial conference). In certain cases, the Court will allow each side to present a five-minute "mini-opening statement." This will be discussed at the pre-trial conference.

Next, the Court will conduct initial voir dire, using a standard list of questions (attached at the end of this document) as well as questions related to burden of proof, evidence, credibility of witnesses, bias, and other relevant legal issues as guided by CACI instructions. Counsel may submit in writing specific questions and areas of inquiry they want the Court to cover. Phrase proposed questions in a neutral tone. Attorney voir dire

time is determined by the Court based on reasonable estimates at pretrial conference. While the Court typically allows approximately 20 minutes **per side** for the initial 18 prospective jurors and 10 minutes **per side** for each next set of new jurors, the Court is flexible about voir dire time allotments, in accordance with CCP § 223.5.

Pre-argument, pre-commitment or indoctrination of jurors to vote a particular way and/or suggestive questions will not be permitted. Counsel may ask general questions to the panel at large or individual questions to each juror in any order. Jurors are to be addressed by last name or juror seat number.

Counsel shall decide at pre-trial conference whether or not voir dire is reported. If not, counsel shall stipulate that the reporter is excused for voir dire.

Hardship requests of jurors will be heard on an individual basis with all other prospective jurors returning to the jury assembly room.

The Court uses a six-pack method for jury selection. Challenges for cause are made (at side bar) following voir dire of the first 18 prospective jurors. The vacated seats in the box from granted “for cause” challenges will be replaced from the 6 prospective jurors on the bottom row (“six-pack” starting from left to right). Peremptory challenges are permitted only for the 12 prospective jurors in the box. **Each side** receives 6 peremptory challenges. Vacated seats are filled from the six-pack. When the six-pack is empty from challenges and only 11 prospective jurors remain in the box, the clerk will call 7 new prospective jurors. The first 12 jurors remaining after all sides have passed will constitute the jury.

*Batson/Wheeler* challenges must be made outside the presence of the jury.

The number of alternate jurors will be determined at the trial management conference. Each side receives one challenge per the number of alternates. Alternates frequently can be stipulated to at side bar after voir dire. Replacement of a juror by an alternate shall be by random “lot” selection by the Court.

Counsel may have an opportunity for a mini opening statement before he/she begins voir dire. However, this will happen only if counsel has requested permission for a mini opening statement at the pretrial conference and the court has granted that request.

### **Preinstructions and Opening Statements**

The court will preinstruct the jury with standard CACI instructions **before** opening statements.

At the pretrial conference, the Court will seek time estimates from counsel for opening statements, and then set time limits. Please follow these time limits.

Opening statement is not argument. State only the expected evidence, not your opinion of its force and/or effect on an expected verdict. If a chart, photograph or other demonstrative evidence is to be used in opening statement, it should be shown to and approved by opposing counsel prior to the commencement of the statements (if necessary, the Court will resolve any issues).

### **Trial: General Matters**

**Be efficient with jury time.** The jury is present in the courthouse from 9:00 a.m. to 12 noon and from 1:30 to 4:30 each day of trial. If there are issues that must be heard outside of the presence of the jury, timely arrangements should be made by counsel. Counsel is expected to be in the court hallway at 8:45 a.m. If counsel believes there is a matter to take up before calling the jury, please notify opposing counsel and the court and appear at 8:30. Please knock on the courtroom door if it is not yet open. If counsel has not informed the Court of the issue in advance and shows up too late to address it before calling the jury at 9:00, the matter may not be addressed until a later time.

Counsel shall turn off all audible cellphones and pagers, and shall instruct their clients and witnesses to do the same.

When setting up technical equipment, counsel is responsible for ensuring that electrical cords and cables do not present safety hazards. Please refrain from use of duct tape to secure cords; rather, use of cord or floor covers/mats that will not leave residue is preferred.

Counsel should keep the court informed of any potential problem that may disrupt trial; for example, availability of witnesses or malfunctioning technical equipment. It is better to anticipate a problem that does not occur than to be surprised by the problem in front of the jury. At the conclusion of each day's session, counsel should update the court of witnesses and time estimates to confirm that trial is on schedule.

Before convening in the morning and after the noon recess and on breaks, jurors will be told to assemble in the jury assembly room rather than returning to the courtroom, so to reduce jurors being present in the hallway, in the presence of parties, witnesses or counsel while waiting for the courtroom to open. Counsel should remind their clients to be aware at all times of the jurors' potential presence in the hallway. Counsel are instructed to have conferences with clients, opposing counsel, and/or witnesses in the stairwell or on another floor to avoid problems.

Objections, statements, and legal arguments are made while standing and are addressed to the Court, not to opposing counsel. Counsel shall not interrupt the Court or opposing counsel. Objections shall be succinct and shall state specific, recognized legal grounds for the objection. Counsel shall avoid speaking objections or argument when objecting or responding to objections. After the Court rules on an objection, there will be no further discussion in front of the jury. Upon request, the Court may hear more extensive argument at side bar or otherwise outside of the presence of the jury.

Counsel shall request to approach the bench if counsel believes any *in limine* ruling should be revisited or reconsidered.

All other requests to approach for sidebar may be denied in the discretion of the Court. Such conferences will normally be off the record. If counsel wishes to place matters on the record, counsel may so request and proceedings will be placed on the record outside of the presence of the jury at the next opportunity.

All members of the court staff shall be treated courteously. When the court is in session, the staff shall be referred to as “Madam or Mr. Clerk”, “Madam/Mr. Reporter” or “Deputy.” During proceedings, all other persons shall be addressed by last name. First names (including those of opposing counsel) should not be used in front of the jury.

## **Witnesses**

Counsel is responsible for securing timely presence of witnesses during presentation of the case. Counsel should always have present in the court building all witnesses who are anticipated to be called that session, e.g. all the witnesses for the morning or all the witnesses for the afternoon. Where an expert witness is to be called, it is acceptable to estimate a specific time for that testimony. However, counsel should have another witness available if the witness is delayed or the trial moves faster than anticipated.

**Avoid the situation of not having a witness present to testify.**

Please ask permission to approach a witness on the stand for the first time. The Court may then grant leave to approach that witness without further request.

Counsel shall refrain from argument or commentary during examination of witnesses. If a witness is to be admonished, counsel should request the court to admonish the witness.

Counsel should never block any juror’s view of the witness or walk between the reporter and the bench. Counsel shall not place their hands or papers on the jury rail.

If jurors submit written questions to be asked of witnesses, they will be considered at side bar with the attorneys after all questioning by counsel and Court of the witness has finished. If a juror-supplied question is appropriate, the court will ask the question, either

as written or as slightly paraphrased. The Court will allow appropriate and limited follow-up questioning by counsel in order to put the witness' answer into context. The Court will provide all written questions, whether asked of the witness or not, to the clerk to be included in the record.

### **Exhibits:**

No demonstrative exhibits, charts, diagrams or enlargements shall be placed or held within sight of the jury or read aloud unless by stipulation of all parties or admission into evidence by the Court.

The parties are directed to meet and confer to (1) avoid unnecessary duplication or repetition of exhibits and (2) resolve foundational objections, particularly for proffered business records, to the extent possible.

**Plaintiff's exhibits shall start with number 1 and proceed sequentially. Defense exhibits should be numbered starting at 501, or else at a mutually-agreed number that will not risk overlap with Plaintiff's/Petitioner's exhibits.** If more than one side offers the same document, both shall use the same exhibit number for that document.

**For JURY TRIALS**, the court **requires** that each party provide multiple **identical and identically pre-numbered** sets of all trial exhibits (other than unique and irreproducible physical objects), one for each of the following:

- The bench
- The clerk
- The witness stand
- **Each** party
- Yourself

Accordingly, this typically means a minimum of **five** full sets of pre-numbered exhibits, plus a further copy for each additional party, if any, beyond the minimum two.

Counsel shall premark all exhibits before the testimony of witnesses that they pertain to, unless used for impeachment. If possible, all exhibits should be presented to the other side and marked for identification before that side's presentation of its case. Although exhibits are premarked, when first identifying the exhibit on the record you should request that it be marked for the premarked number – this assists the clerk in keeping detailed records of what exhibits have been marked and what exhibits are later admitted. Some exhibits that are premarked are never referred to. Each exhibit must be identified on the record by a witness or by stipulation. Motions to admit exhibits into evidence should be made before the witness is excused in the event of foundation objections.

If an exhibit is provided to the witness, counsel may point to or help identify the part of the exhibit to which the witness should refer, but should then step back in the well so as not to block the jury view of the witness. Counsel should not remain looming over the witness while he or she is testifying. This is also true when a larger exhibit such as a map or diagram is placed on the board behind the witness. Counsel should not stand behind the witness while conducting the examination.

At the close of each trial day, it is counsel's responsibility to store all demonstrative exhibits and equipment, unless other instructions are given.

The Court is unlikely to allow parties to use exhibits that were not identified and marked before trial, unless they are truly rebuttal or impeachment exhibits.

### **Closing Instructions and Argument**

The Court will instruct the jurors **before** closing arguments.

At the pretrial conference, the Court will seek time estimates from counsel for closing arguments, and then set time limits. Please follow these time limits.

Short recesses may be requested to set up technical equipment to be used during argument.

### **Jury Deliberations**

The courtroom is generally closed during jury deliberations. Counsel and the parties may remain in the building or leave, but in all cases it is the responsibility of counsel to inform the Clerk and Deputy where he or she can be reached at all times. The parties and counsel are expected to return to the courtroom **within 20 minutes** of being notified by the Clerk.

### **After Trial**

If counsel wish to have an opportunity to visit with the jurors after they have been discharged, they should let the Court know.

After the verdict is rendered by the jury, the prevailing party shall prepare the judgment, unless otherwise directed by the Court. The judgment shall be submitted within 5 court days after the trial is concluded.

HON. JULIA ALLOGGIAMENTO

**SAMPLE JURY PANEL QUESTIONNAIRE (FOR CIVIL CASES)**

1. Please state your name.
2. Do you know any of the following: (a) the parties; (b) the attorneys; (c) the names of the board; (d) the judge or court staff; or (e) the other jurors? If so, please explain.
3. What city do you live in? What is your occupation?
4. Are you married or have a significant other? If so, please tell us that person's occupation.
5. Do you have adult children? If so, please tell us your children's occupations.
6. Have you heard of, or do you know anything, about the specific facts or events in this case? Are you familiar with the places or property mentioned in this case?
7. Do you believe that this kind of case should not be in court to be decided by a jury?
8. Do you have any beliefs or feelings toward any of the parties, attorneys, or witnesses that might be regarded as a bias or prejudice for or against any of them? Do you have any interest, financial or otherwise, in the outcome of this case?
9. Have you ever served as a juror or witness? If so, was it a civil or criminal case? Without stating what the verdict was, did you reach a verdict? Did the case involve these parties or attorneys (or names on the board)?
10. Have you or someone close to you ever sued anyone, or presented a claim against anyone over a matter similar to this case? If so, did the matter end in a good way?
11. Has anyone ever sued (or presented a claim against) you or someone close to you in over a matter similar to this case? If so, did the matter end in a good way?
12. Are you, or is someone close to you, currently involved in a lawsuit of any kind? If so, please explain.
13. If you do become a juror, will you follow the law as I give it to you?
14. Is there any reason not already discussed that you feel you will be unable to be a fair and impartial juror on this case.