

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**

**TRIAL RULES**

Department PS2

(Effective January 1, 2021)

**\*\*Department Trial Rules subject to changes and/or updates closer to trial date given the fluid nature of the COVID-19 crisis, and the ever-changing availability of resources.**

All trial counsel, including self-represented litigants, shall comply with the following requirements:

- A. **Jury Fees.** Non-refundable jury fees of \$150.00 are to be deposited per Code of Civil Procedure section 631 et. seq. *Failure to comply with this requirement will result in a forfeiture of the party's right to a jury trial.* If the Court has declared that a party has forfeited its right to a jury trial, that party shall not post jury fees until that party has been granted relief from that forfeiture. Any request for relief from a forfeiture of the right to a jury trial must be brought in the form of a noticed motion. At commencement of trial, and each day of trial thereafter, counsel are directed to pay their share of the daily jury fees and court reporter fees directly to the clerk's office and provide a copy of the receipt to the courtroom assistant.
- B. **Motions in Limine.** Motions in limine shall be filed with the court and served so opposing counsel receives them on or before 4:00 p.m. three (3) weeks prior to the date of trial. All motions in limine shall be numbered consecutively. Before and after filing motions in limine, the parties shall meet and confer in an effort to reach stipulations resolving disputes over the admissibility of evidence and limit the contested motions in limine to a manageable number for the court to decide. Counsel filing motions in limine must include in each motion a summary of efforts to meet and confer on that specific motion. *Failure to meet and confer prior to filing motions in limine may result in the court declining to consider motions in limine, an OSC re sanctions, or both.*

Oppositions to all motions in limine shall be filed with the court and served so opposing counsel receives them by 4:00 p.m. at least 10 days prior to the date of trial.

Unless leave of court is granted in advance, no witness shall testify, no documentary evidence shall be introduced, and no counsel shall ask a question or make any comment in the presence of the jury, concerning any of the following subjects:

- (1) Whether a party is now or was formerly insured against any type of loss or liability.

- (2) Except as permitted by Civil Code section 3333.1, subdivision (a), any insurance benefits received by the plaintiff.
- (3) The retention of any counsel by an insurance company, unless the insurance company is a party to the action.
- (4) Settlement negotiations, mediation efforts, statements made during or in reference to those events, or documents prepared for or during those events.
- (5) The existence or terms of any settlement agreements reached with other parties, or payments made pursuant to those settlements.
- (6) Unless punitive damages are being sought, the income, wealth, or financial condition of any of the parties.
- (7) Any other past or current litigation involving, or claims by or against, any of the parties. However, an expert witness may be examined concerning the number of cases in which the expert has been consulted by or has testified for a party.
- (8) Whether a party or a party's representative was present or absent during the trial or any portion thereof. However, counsel may argue the significance of a party's failure to testify or to offer particular evidence.
- (9) Any party's attorney's fees, costs of suit, or other litigation expenses. However, an expert witness may be examined concerning the fee charged by the expert for the expert's testimony.
- (10) If the plaintiff is making any claims for economic damages in the form of past medical expenses that were satisfied by an insurer, evidence of the amount of those damages shall be limited to the amount paid by the insurer and accepted by the health care provider in full satisfaction of that health care provider's invoice.

*\*\*\*Do not file motions in limine to impose the restrictions stated above.*

As a matter of course, any claim for punitive damages shall be bifurcated so it is unnecessary to seek bifurcation or file a motion in limine to address this issue. The first phase of the trial will include the question of whether the defendants acted with oppression, fraud, or malice. The question of the amount of punitive damages to be awarded, if any, shall be tried to the same finder of fact in a second phase of the trial.

C. **Joint Documents.** No later than two (2) weeks prior to trial, the parties shall meet and confer regarding a proposed joint statement of the case, joint witness list, joint exhibit list, proposed jury instructions, proposed verdict forms, and a joint timeline chart for an accurate trial time estimate. (See Local Rule 3401.) The parties shall prepare and exchange the following:

- (1) a neutral non-argumentative joint statement of the case suitable for reading to the venire panel [if applicable];
- (2) a joint witness list which includes the name, place of residence and occupation of each witness, a brief description of the subject matter of each

witness's testimony, the party calling that witness, a timeline in hours (not days) reflecting time estimates for direct, cross, and re-direct examination for each witness, a telephone number and email address for each witness, and any special scheduling problems or special requirements;

- (3) a joint exhibit list;
- (4) proposed jury instructions [if applicable];
- (5) proposed verdict forms or special verdict forms (see Paragraph H below for additional requirements concerning the proposed jury instructions, verdict forms, and special verdict forms) [if applicable]; and
- (6) a joint timeline chart including a time estimate in hours (not days) for all of the following for each party: opening statements, closing arguments, direct, cross, and re-direct examination of each witness, and a total of all of the above time estimates in order to arrive at a realistic overall time estimate of the trial in hours.

***\*\*\*The parties are ordered to file/submit these joint documents to the court by 4:00 p.m. one (1) week prior to the date of trial. At the same time these documents are filed/submitted, the parties are to deliver to Department PS2: (1) one tabbed binder containing all of these joint documents.***

The parties are to use the Local Rule 3401 Binder Guidelines (available at <https://www.riverside.courts.ca.gov/Divisions/Civil/Local%20Rule%203401%20Booklet.pdf?rev=01-30-2020-02:08:14pm>) Failure to file/submit these joint documents and courtesy copies to the Court may result in an Order to Show Cause re sanctions.

D. **Pre-Trial Good Faith Declaration.** On or before 4:00 p.m. the 5<sup>th</sup> calendar day before trial, lead trial counsel for each party (or all lead counsel for all parties jointly) shall file with the court and serve a declaration under penalty of perjury stating:

- (1) The requirements set forth in items No. B and No. C above have been completed in good faith;
- (2) Counsel has advised all witnesses they intend to call of the technological requirements for participating in a video trial, confirmed each witness's ability to be seen and heard using the WebEx platform, and advised each witness that recording the proceedings is strictly prohibited and may result in an OSC re sanctions or contempt;
- (3) All issues agreed upon by the parties and any unresolved issues, including, but not limited to, issues related to the authentication and/or admissibility of any exhibits and the admissibility of any anticipated testimony.

Failure to file a declaration may result in issuance of an Order to Show Cause re sanctions.

- E. **Trial Briefs.** All trial briefs must be filed and served on or before the date the pre-trial good faith declaration is filed and served. The brief must not exceed 20 pages, inclusive of attachments.
- F. **Trial Exhibits/Deposition Transcripts.** With the exception of exhibits offered solely for the purpose of impeachment, ALL exhibits (including demonstratives) the parties intend to offer at trial must be included in a jointly-prepared exhibit binder lodged with the court *by 4:00 p.m. one (1) week prior to the date of trial*. *Exhibits not included in the joint binder, with the exception of those offered solely for impeachment, will be excluded from evidence*—this rule is necessary given the technological challenges posed by remote trials and for that reason, absent extenuating circumstances, no exceptions will be made. Exhibits must be submitted as followed:
- Two full sets of exhibits in hard copy, one for the court and one for the courtroom assistant. Every page of the exhibits is to be pre-indexed, organized numerically, bates stamped, and tabbed. Exhibits are to be on 8½ x 11 in. paper and shall be placed in 3-ring binders. Exhibit sets shall be numbered consecutively using the number matching those set out in the joint exhibit list, as required in paragraph C above.
  - A flash/thumb drive containing a mirror image of the exhibit binders. Each exhibit on the drive must be in PDF format and saved and labeled separately, e.g., Plaintiff's Trial Exhibit 1, Plaintiff's Trial Exhibit 2, etc. DO NOT save all exhibits in a single PDF file. Parties may submit multiple flash/thumb drives if necessary, but must label and number all drives submitted e.g., Exhibit Binder 1, Exhibit Binder 2, Flash Drive 1 of 2, etc.

Exhibits that will be offered solely for impeachment need not be in the joint exhibit binder(s). Such evidence must be provided to the Court in the following manner: exhibits that will be offered solely for impeachment must be labeled, organized numerically, bates stamped, and tabbed in the manner of all other exhibits e.g., Plaintiff's Trial Exhibit 1, and should be enclosed in a labeled envelope or package e.g., Plaintiff's Impeachment Evidence. Three copies of each impeachment exhibit should be included in the package (one for the Court, one for the courtroom assistant, and one for the reporter), which need not be shared in advance with opposing parties. Failure to provide impeachment exhibits to the Court as required may result in the Court precluding their use at trial. All impeachment exhibits must be available in PDF form so that they may be shared by counsel at trial. (See Technological Recommendations, below).

Deposition transcripts which may be read or referred to at trial must be lodged with the court *by 4:00 p.m. one (1) week prior to the date of trial*; absent an agreement of all counsel/parties, the transcripts must be original/certified. If counsel intends to show the Court or jury [if applicable] any portion of the deposition, a PDF copy

of the deposition must be included on the flash/thumb drive containing the Trial Exhibits, or on a separate flash/thumb drive that is labeled and numbered.

\*\*\*Please contact the courtroom assistant in Department PS2 to arrange a drop-off of Exhibit binders, courtesy copies etc. Coordinating with the courtroom assistant well in advance of any deadlines is essential while the courthouse is closed to the general public due to the pandemic.

- G. **Jury Questionnaires/Hardships.** Once a panel is ordered, a preliminary questionnaire will be submitted to the venire automatically by the jury room. This preliminary questionnaire will address hardships, time-qualification, and the ability of panel members to use and access the technology required to participate in the trial. The Court will review this information and discuss any concerns with counsel and self-represented parties. Thereafter, the Court may submit to the panel a questionnaire related to the specifics of the case being tried. The Court will discuss this with counsel and self-represented parties, and will adjust it as required. If the parties have a questionnaire that they would like to use, it must be a joint questionnaire submitted by all parties. After these initial steps, the Court will conduct voir dire on video. All general laws and rules relating to peremptory and for-cause challenges will apply. Counsel and self-represented parties should meet and confer in advance and notify the Court as to any agreement to stipulate to a jury of fewer than 12 persons, or any agreement about limiting peremptory challenges.
- H. **Jury Instructions/Verdict Forms.** The parties are to submit the following documents related to proposed jury instructions and verdict forms:
- (1) All agreed upon proposed jury instructions with no blanks and no brackets: with text only in a format suitable to give to the jury;
  - (2) All proposed jury instructions in dispute (not agreed upon) with no blanks and no brackets: with text only in a format suitable to give to the jury, with pocket briefs by each party as to why their version is more appropriate for use;
  - (3) All agreed upon proposed verdict form(s) and/or special verdict form(s): with text in a format suitable to give to the jury;
  - (4) All verdict form(s) and/or special verdict form(s) in dispute (not agreed upon): with text only in a format suitable to give to the jury, along with pocket briefs by each party as to why their version is more appropriate for use; and
  - (5) A disposition table showing each jury instruction and verdict form and special verdict form proposed by any party and indicating the following: (1) the party proposing the jury instruction or verdict form; (2) whether the other parties agree or disagree with the proposed jury instruction or verdict form; (3) whether the court agrees to give the proposed jury instruction or verdict form as proposed; (4) whether the court agrees to

give the instruction or verdict form as modified; and (5) whether the court declines to give the proposed jury instruction or verdict form.

- I. **Technological Requirements for Virtual/Video Trials.** All counsel and self-represented parties are required to download, or have the capacity to run, the Cisco WebEx application. It will not be sufficient for counsel and self-represented parties to use the web-based version of this program as it has substantially reduced functionality. For more information on this program, or to test the program visit <https://www.webex.com/test-meeting.html> All counsel and self-represented parties must use a PC, laptop, or large tablet for the video portions of the hearing. All participants must have access to a video camera, whether native to the PC, laptop, or tablet being used, or attached for the purpose of the hearing. All participants must also have a high-speed internet connection sufficient to stream video on WebEx throughout the proceedings. *If these technological requirements cannot be met, counsel and self-represented parties must notify the Court at the time of the trial setting conference, and must provide an explanation as to why the equipment is not, or cannot be, made available.* It is not acceptable to raise this issue for the first time at trial. Failure to provide this information in advance of trial may result in an Order to Show Cause re sanctions.
  
- J. **Pretrial Technology Conference.** Unless the parties affirmatively advise the Court that they do not wish to participate, the Court may schedule a pretrial conference in advance of trial to allow counsel and self-represented parties to test the WebEx video application with the Court and to ask any questions about how the technology will be used at trial. Substantive matters will not be taken up at the conference, and conferences for several trials may be held at the same time. All conferences will take place on WebEx video using meeting number 285-766-515 absent further order of the Court.
  
- K. **Special Video Trial Procedures.**
  - (1) Recording the trial proceedings in any way is prohibited and will result in an Order to Show Cause re sanctions of up to \$1500 or a contempt citation punished by sanctions of up to \$1000 or 5 days in jail.
  - (2) All counsel and self-represented parties must check in at least 15 minutes in advance of each appearance at trial and must ensure that their video and audio connection to the Court is in working order. Any technological problems must be immediately reported to the courtroom assistant.
  - (3) All parties, insurance representatives, and any other persons necessary to participate in settlement discussions and to enter a settlement on the record pursuant to Code of Civil Procedure section 664.6 shall appear in Department PS2 via WebEx on the first day of trial, unless the Court has excused that appearance in advance, based on a finding of good cause.
  - (4) "Trial call" will be on a Friday at 8:30 a.m. in this Department. Absent orders to the contrary, the trial call will be conducted via WebEx telephone in the same manner, and at the same number, as the law and motion calendar.

Once you have been called out to trial, all sessions will be conducted via WebEx video using meeting number 285-766-515 absent further order of the Court. The courtroom assistant will provide connection instructions for each session if this meeting number must be changed for any reason.

- (5) Failure to appear at trial call, or failure to appear at any day or session of trial may result in your case being dismissed, or an Order to Show Cause re sanctions.
- (6) On the first day of trial, or before, all counsel and self-represented parties should provide the courtroom assistant with a telephone number (direct line) and an email address where they can be reach in case they are disconnected from WebEx. Counsel must also confirm that the courtroom assistant has the correct telephone and email address for each witness testifying each day (this information should be on the joint witness list, see Paragraph C(2) above).
- (7) During trial, trial exhibits (including impeachment evidence) may not be published so that they are visible to any witness, whether in a bench or jury trial, absent permission from the Court. Because the type of technology being used at trial may allow for published exhibits to remain visible long-after the Court orders them to be removed or de-published, violations of this rule will be taken very seriously.
- (8) In a jury trial, if counsel or a self-represented party wishes to use a document solely for the purpose of refreshing recollection, they must notify the Court so that all parties/counsel and the Court may view the document outside the presence of the jury; this will be done either in a breakout room or by moving the jury to a breakout room or to the lobby.
- (9) In a jury trial, counsel and self-represented parties wishing to use exhibits (including demonstratives) during opening statements or closing arguments must meet and confer with opposing counsel/parties in advance. Any disagreements regarding the use of these materials must be brought to the Court's attention well in advance of the statement or argument so that the Court may consider and rule on the matter outside the presence of the jury. Failure to meet and confer or raise this issue in advance of opening or closing will result in exclusion of the disputed materials.
- (10) Counsel and self-represented parties must advise all witnesses they intend to call of the Court's technological requirements for participation in video trials. (See Paragraph D(2), above.)
- (11) Counsel must advise all witnesses they intend to call that they may be required by the Court to testify under oath that they are alone and not able to see or communicate with any person that cannot be seen on camera during the trial. The Court may inquire of witnesses about the physical location and layout of the space from which they are testifying, and may require witnesses or other participants at trial to pan their video camera around the room to ensure that they are not receiving improper coaching of any type during their testimony.

- (12) Trial proceedings will be streamed live on the web unless the Court finds good cause to disconnect streaming for all or a portion of the trial. Virtual “chambers” conferences will not be streamed on the web.
- (13) The procedures for virtual jury deliberations will be discussed with counsel at the time of trial.
- (14) At the start of each session of trial, the courtroom assistant will create virtual “breakout rooms” for each party (or group of parties). If counsel and parties need to confer outside the presence of the Court or jurors they will be placed into their designated breakout rooms upon request.

L. **Doe Defendants.** If not already dismissed, at the close of trial evidence the court will, without further notice, dismiss all fictitiously named defendants.

M. **Parties Who Have Not Appeared.** No later than one week before the trial date, the plaintiffs and any cross-complainants or plaintiffs in intervention shall file requests to dismiss:

- (1) Any defendant or cross-defendant who has not appeared and for whom no proof of service has been filed; and
- (2) Any defendant or cross-defendant who has been served but who has not appeared and whose default has not been entered.

If any plaintiff, cross-complainant, or plaintiff in intervention fails to dismiss all such defendants and cross-defendants, counsel for that plaintiff, cross-complainant or plaintiff in intervention shall appear in Department PS2 at 8:30 A.M via Webex unless otherwise ordered by the Court on the trial date to show cause why the Court should not either: dismiss all such defendants and cross-defendants; or impose sanctions of up to \$1,500 on plaintiff's, cross-complainant's, or plaintiff in intervention's counsel for the failure to dismiss.

Any plaintiff, cross-complainant, or plaintiff in intervention who opposes the dismissal of that defendant or cross-defendant or the imposition of sanctions shall respond to the OSC with a written declaration filed not later than four court days before the trial date. The Court may deem a party's failure to file a timely declaration, by itself, to constitute that party's consent to the dismissal of that defendant or cross-defendant or to the imposition of monetary sanctions. (RSC Local Rule 3116.)

N. **Trial Setting Order.** These rules are automatically incorporated into all trial setting orders, including those reflected only in the Court's minutes.

O. **Daily Transcripts.** Any party requesting daily reporter's transcripts at trial shall advise the Court of that request no later than one week before the trial date by contacting Lori-Ann Priest Court Reporter Supervisor at (951) 704-7455.

- P. **Requests to Continue Trial.** Generally, any request to continue a trial shall be made by noticed motion. Requests to continue trial may be made by ex parte application only if exigent circumstances exist. Any ex parte application shall explain why the request could not, with the exercise of reasonable diligence, have been brought by a noticed motion. If the trial date is more than two months away, the Court is unlikely to find that exigent circumstances exist.
- Q. **Trial Hours.** Absent contrary instruction from the Court, the court generally expects to hear trials Monday through Thursday from 10:00 a.m. to noon and from 1:30 p.m. to 4:15 p.m. Given the nature of video trials, the Court may reduce or modify these hours or provide additional breaks as appropriate.
- R. **Reaching the Courtroom Assistant.** The courtroom assistant may be reached at (760) 904-5693. Other than as specified in these Rules or ordered by the Court, all counsel and parties are prohibited from sending communications to the courtroom assistant via email; violations of this rule may be treated as improper ex parte communications and may result in an Order to Show Cause re sanctions or contempt, or in reporting to the State Bar.
- S. **Technological Recommendations for Virtual/Video Trials.** The Court strongly recommends the following:
- ◆ That participants use a PC or laptop rather than a tablet or phone. Preferably a device (or multiple devices) with a large screen, or multiple screens.
  - ◆ That participants use a dedicated headset or ear buds with a microphone to ensure that they can be heard by all other participants.
  - ◆ The participants minimize background noise (including muting any mobile or other telephone) and turn off pop-ups or automatic notifications that may interfere with the proceedings.
  - ◆ Counsel and self-represented parties that will be presenting evidence create a dedicated evidence file-folder and save it to their desktop for easy access. This folder should include all PDF formatted Trial Exhibits, separately saved and labeled, any impeachment exhibits, and any depositions that may be shown to the Court or jury [if applicable].
  - ◆ Counsel and self-represented parties that will be presenting evidence close all programs running on their computer that they are not actively using to present at trial. That is, other than WebEx and any exhibit you may be showing, no other programs should be running in the background as they may detract from your presentation, slow your presentation, or be accidentally displayed to the Court or jury [if applicable].
  - ◆ Counsel or self-represented parties that will be presenting evidence practice doing so on the WebEx platform multiple times in advance of the trial date. It is strongly recommended that counsel and parties familiarize themselves

with “view” controls on WebEx to ensure that when they are presenting they are able to see all participants, the materials they are presenting, as well as any notes or other documents they need for trial. The Court suggests practicing with WebEx prior to the pretrial technology conference to ensure any questions that arise during practice are answered at the conference.

- ◆ That all participants at trial set up video equipment in a well-lit environment and test equipment before trial to ensure that they are clearly visible on screen and that there are no distracting features in the background e.g., a whirling fan, pet, television, etc.
- ◆ That participants do not use virtual backgrounds. The Court will require that virtual backgrounds be turned off if they cause lag or delay of the proceedings.
- ◆ That all participants use the WebEx video system and NOT a combination of the video system and telephone. Logging into WebEx video while using telephonic audio can cause feedback. Should it be necessary to use both the phone and WebEx video, the Court will require that computer audio be turned off to ensure the proceedings can be heard.
- ◆ That participants mute their line during trial unless they are speaking or expect to speak.

To the extent that these Trial Rules conflict with Local Rule 3401 these rules control.