

## LEGISLATIVE LAW

### *Coming Soon To A Courthouse Near You: The New Expedited Trial Program for Small Cases*

by Nancy Drabble

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*Nancy Drabble is one of Sacramento's most respected legislative advocates. A graduate of UC Berkeley's Boalt Hall School of Law, she began her career working on consumer and environmental issues for Ralph Nader's organization in Washington. She joined the Consumer Attorneys of California in the mid-80s. Nancy has proven a consistent thorn in the side of the tort reform crowd, year after year helping turn aside efforts to undercut the protections that the civil justice system provides consumers. Aside from serving as CAOC's chief lobbyist, Nancy has for the past two years worn the additional hat of CEO.*

It has been several years in the making and is the legislative product of negotiations between some of the most adversarial groups in the state Capitol. The coming year will see a new type of jury trial in the offing for California – and it could change your practice in some fundamental ways.

As of the New Year, you will have the option – with defense consent – to condense your civil trial into just one day, from voir dire to jury deliberation. It's all thanks to AB 2284, the Expedited Jury Trials Act (codified as Code of Civil Procedure §§630.01 to 630.12). This change promises to shift the courthouse landscape by boosting the number of cases that go to trial and opening the system to a whole range of citizens otherwise denied access to justice.

Such trials are not unusual elsewhere around the U.S. The Expedited Trials Act is modeled on a program that has been used with great success in South Carolina, where it is employed in roughly half of the simpler civil cases. The hope is that California will see similar courtroom benefits.

Use of expedited trials is expected to lower your trial costs, which in turn will make it economically feasible to take cases for smaller amounts you may have had to turn down in the past, thus giving more Californians access to justice. Expedited trials should ease the load on state courts and also be less burdensome for jurors, helping to prevent juror burnout while asserting the fundamental importance of the right to trial by jury.

Of course, we won't see any of the benefits of expedited jury trials if they aren't used. But after two years of negotiations in Sacramento, our usual adversaries also have come to embrace expedited trials. The California Defense Counsel, the California Chamber of Commerce, representatives of insurance companies – all were at the table as this proposal was crafted and, as a result, all have already “bought in” to its benefits.

Here's what you need to know when considering whether this expedited format is right for your case. Both sides must stipulate to the expedited trial and the court must agree. There is no defined dollar range for the amount of money at stake, but we think this will be most useful for smaller cases, perhaps those involving claims of \$30,000 or less, in which few issues are contested.

The jury will be made up of eight members, six of whom must agree on a verdict. A smaller jury may be used with the agreement of both sides. Voir dire will be limited to one hour, and each side will be limited to three peremptory challenges. A juror questionnaire can be used to help speed up the selection process. No alternate jurors will be used. A court reporter will not be used unless one or both parties agree to pay for one.

Each side will be limited to three hours for presentation of its case, including the opening statement and closing argument. Witness lists, exhibits and other materials will be exchanged 25 days before trial. Both sides will be encouraged to stipulate in advance to the admission of certain evidence and evidentiary objections will be handled during a pre-trial conference. Standard rules of evidence will apply unless both parties agree to relaxed rules, such as use of videotaped expert depositions.

It is not required, but if both sides agree they may enter into a pre-trial “high-low” agreement that will not be disclosed to the jury. Such an agreement will guarantee the plaintiff a minimum award and will place a ceiling on the defense’s liability, typically at the policy limit, no matter what the jury decides.

The verdict will be binding. There will be no limit on how long a jury may take to reach a verdict. The rights to appeal, move for a directed verdict and make post-trial motions will be waived by both parties unless there has been judicial misconduct, juror misconduct or fraud that prevented a fair trial. Parties will be allowed to make post-trial motions relating to costs and attorneys’ fees, motions to enforce a judgment, and motion to correct a judgment for clerical error.

The expedited trials process will save you time and money while expanding the range of cases you can take, which are significant benefits. And you might find an additional benefit to this system: these shorter, more narrowly-focused trials can be used to give valuable court experience to newer attorneys.

CAOC feels strongly that the use of expedited trials will make it possible for more Californians to have their cases resolved by a jury and in that way have a better understanding of the civil justice system. We’re looking forward to the New Year and the chance to see what kind of a difference The Expedited Trials Act will make to your practice.