

## **COURTROOM ORDERS FOR JURY TRIALS IN COURTROOM 43**

**Hon. Ben Coats**

### **THE COURT MAY AMEND, ADJUST OR ALTER THESE ORDERS AS IT DEEMS APPROPRIATE.**

1. Jury or Court Trial: When the case is called out to trial, the parties must confirm with the judicial secretary immediately whether the case will be a jury trial (if fees were timely posted) or whether all parties waive jury. Any waiver of jury after the timely posting of jury fees shall be confirmed on the record on the first day of trial.
2. Jury Fees: All jury fees must be posted as required by the Code of Civil Procedure, the California Rules of Court, and the Ventura Superior Court Local Rules. (Before the initial case management conference or, if none, within 365 days of filing the complaint.) Failure to timely post jury fees may result in a waiver of jury trial. Each day of trial before court begins, Counsel shall submit to the courtroom clerk a check for that day's jury fees.
3. Time Estimate: Please confirm with the Court the reasonable time estimate for the trial, including jury selection and reasonable time for deliberations upon receiving notice the case is being called out for trial.
4. Trial is conducted Tuesdays through Fridays. Absent unusual circumstances, jury trials begin at 9:30 a.m., with a brief recess before 11:00 a.m. The afternoon session begins at 1:30 p.m. with a 15-minute recess around 3:00 p.m. and ends at approximately 4:30 p.m. depending on the status of witnesses testifying.
5. Pre-trial Documents – Unless otherwise ordered, the Court holds its Pre-Trial conferences when the matter is called in for trial, immediately before jury selection. The Court will take the time necessary to handle all pre-trial issues at the conference. Trial Briefs, Witness Lists and all *In Limine* Motions SHALL be served on all parties before trial and filed with the Judicial Assistant on the first day of trial (at the pre-trial conference). Service shall be either by personal service or by email service with pdf attachment. All *in limine* motions shall be in writing and not exceed five pages per motion. It is the duty of counsel to adhere to the *in limine* rulings of the Court and to instruct their witnesses accordingly.

In limine motions shall be limited to those necessary to resolve evidentiary or other legal issues before the selection of the jury. Each in limine motion shall not exceed five (5) pages. The Court requests each side file no more than five (5) in limine motions, but no party may file more than ten (10) in limine motions without leave of the Court to do so.

Before addressing the issue with the court, counsel shall meet and confer on the following matters to determine areas of agreement and disagreement and/or stipulations concerning:

- a. In limine motions -the parties shall make a joint list of all motions filed by the parties, and shall indicate those motions which are unopposed and those on which they disagree;
- b. Trial Brief- a trial brief should identify the causes of action (or primary defenses) on which the parties are proceeding, the causes or defenses they are dismissing, and the relief they seek from the litigation. Parties should also provide a summary of the facts in issue and a brief statement of what is expected to be proven in support of claims/defenses. These summaries should be sufficient to allow the Court to identify the essential facts in issue;
- c. Verdicts -whether general or special and form thereof;
- d. Admissibility (including authenticity and foundation) of documents, photos, records or other writings or things - the parties' agreement shall be reduced to a written stipulation for filing. The parties are ordered to meet and confer before trial regarding which exhibits will be used jointly and for those which admissibility may be stipulated;

e. Deposition (transcript or video) edits - Wrangling over how much or which portions of deposition transcripts will be read to jurors in lieu of the witness' live testimony is a waste of juror and court time; the same is true concerning video-recorded depositions. Accordingly, if a party wishes to read deposition testimony (or show video testimony) for reason of witness unavailability, counsel shall meet and confer on their own time and come to agreement to the fullest extent possible on what will be read or shown to the jury. The parties' agreement shall be reduced to a written stipulation for filing. This rule does not apply to impeachment of a witness testifying in court. Transparently unmeritorious objections to use of recorded testimony are frowned upon and may result in admonishment or sanctions.

If any party intends to offer audio or video recording of deposition testimony pursuant to CCP § 2025.340(m), notice designating portions of the recording the party intends to use, and any objections thereto, must be served on the Court a minimum of two court days before the date of the playing of the recording. Notice submitted later than two days before the day of intended use of the recording shall be deemed insufficient time for objections to be made and ruled on. To comply with this deadline, the party initially designating the recording should serve the initial notice on all parties four days before the date of the playing of the recording. The notice should identify by page and line the portions intended to be shown. Any other party should serve notice of objections and counter designations on all parties three days prior. The party initially designating the recording shall compile the designations, objections, counter-designations and objections in a final document to be served on the Court. The Court encourages the parties to resolve these matters as early as possible before trial to avoid unnecessary delays. This process can be time consuming and should not be postponed to the last minute. **Failure to comply with these requirements may result in the Court denying permission to show part or all of the recording at trial or waiver of any objections to the use of designated portions of the recording.**

f. Demonstrative evidence - counsel shall show, exchange, and meet and confer on their own time. The parties' agreement shall be reduced to a written stipulation for filing.

g. Statement of the Case – The parties shall provide the Court with a jointly prepared, brief, neutral statement of the case to be read to prospective jurors. If the parties intend to present “mini-opening statements,” no statement of the case is required;

h. Witness List for the Court's use - Please include a very brief statement of identity (e.g., John Doe" - Registered Nurse present during the surgery; Jane Smith- President of Widget Co.).

6. Court Reporter: Any party desiring a court reporter should ensure that arrangements have been made upon receiving notice the case is being called out for trial. It is the parties' sole responsibility to hire and pay for a court reporter. If the parties waive a court reporter, the parties are advised that any challenge to the sufficiency of the evidence to support the verdict or any ruling by the Court will be deemed waived on appeal. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132.) Accordingly, the Court strongly encourages the parties' retention of a court reporter for in limine hearings, jury selection, and all trial proceedings, including but not limited to the rendering of a verdict and any post-trial motions. The Court requires that any court reporter retained by the parties have Realtime capability using Casenet software starting with the beginning of opening statements. The court reporter may charge an additional fee for this service, but the Court finds it essential in ruling on evidentiary objections during trial.

**Absent exigent circumstances, counsel should obtain a guarantee from their reporting service that the same court reporter will be present throughout the entire trial. Many legal service providers have adopted a different business model for their convenience, but the unpredictability and disruption when multiple court reporters are used is not acceptable to the Court.**

Parties who have been granted a fee waiver are entitled to a court reporter without charge upon written request in conformance with California Rule of Court 2.956.

Counsel shall provide any unusual or difficult spellings to the court reporter in advance of testimony, when possible.

7. Counsel and all parties shall stand each time the venire or jury enters or leaves the courtroom.

8. Counsel are hereby ordered to instruct their respective clients and witnesses as to the following:

- They must not communicate in any manner with the venire, jurors, or converse in any manner within any juror's hearing;
- They must dress in an appropriate and businesslike manner when in court. This includes witnesses testifying by remote means, such as Zoom. They may not read, chew gum, or eat in the courtroom or while testifying. Water, coffee or tea is permitted in a sealable bottle or travel cup;
- While in the courtroom they may not indicate by words or conduct disagreement with or approval of testimony or other evidence being given, nor may they engage in these behaviors in response to any actions of the Court;
- While testifying by remote means, they must be indoors, and alone in a quiet room. No one else may be present with them unless necessary for a special accommodation and the appropriate request has been granted by the Court.
- After testifying, they shall not discuss their testimony with any upcoming witness.

9. Jury Questionnaires: If either party requests the use of a jury questionnaire, the requesting party(ies) shall serve and file a joint proposed jury questionnaire (including all written instructions to jurors) by the date of the pre-trial conference, or otherwise by leave of the Court. Service shall be by personal service or email service with pdf attachment. The parties should specify whether they are requesting that jurors fill out written questionnaires in their own handwriting during jury selection, or whether it is a list of questions to be asked by the Court during jury selection. The parties must agree on which party will assume the responsibility of preparing and copying the questionnaires, otherwise the Court will designate the party to do so. The Court will not prepare or copy questionnaires (except the Court's own written questionnaire, if one is used). Any questionnaires (including at least 60 copies of same) shall be present in Court before jury selection starts. Additional copies of the questionnaire shall be provided by the party appointed by agreement of the parties or order of the Court. If jurors fill out written questionnaires, then the party designated to copy questionnaires will also be the party providing copies of the completed questionnaires to all other parties, with the originals being provided to the Court. Failure to follow these procedures may result in the denial of a request to use juror questionnaires.

10. All exhibits shall be exchanged and pre-marked before the start of jury selection. **To the extent that the parties' proposed exhibits duplicate each other, the parties shall agree on a master set of exhibits with plaintiff assigned a range of numbers beginning with the number "1," and additional plaintiffs with subsequent consecutive number ranges thereafter, proceeding to each of the defendants being assigned consecutive number ranges after that.** Each distinct exhibit shall have only one number (i.e., no one exhibit shall have more than a single exhibit number designation). **MARKING TWO COPIES OF A JOINTLY REQUESTED EXHIBIT AND REFERRING TO IT BY DIFFERENT EXHIBIT NUMBERS IS CONFUSING AND A WASTE OF TIME AND RESOURCES. IT WILL NOT BE ALLOWED.** Do not wait until the beginning of opening statements (or later) to have exhibits marked. To the extent possible, please only mark the exhibits reasonably expected to be used at trial.

11. Mini Opening Statements: Any request for "mini opening" statements during jury selection shall be made to the Court on the first day of trial. (Code of Civ. Proc., § 222.5, subd. (d).) The mini opening statements shall be neutral, non-

argumentative descriptions of each party's claims and/or defenses, and they may include a very general overview of the facts of the case. The mini opening statements **shall not exceed three (3) minutes per party**. The Court will advise the prospective jurors that: (a) the mini opening statements are not evidence; (b) they are provided only to permit the jurors to better understand the nature of the case and of the questions they may be asked in voir dire; (c) they are provided to permit the jurors to determine if they have any life experiences, opinions, or biases that may prevent them from objectively, fairly, and impartially hearing the evidence and rendering a verdict in the type of case described; and (d) the jurors are not to form any prejudgments, biases, or assumptions about the case or the evidence from the mini opening statements.

12. The Court utilizes the following method of jury selection to reduce the time and number of people in the courtroom. In brief, hardshipping of jurors for time in longer cases (10 days or more) will be done by the Court in the jury assembly room utilizing a questionnaire. This is not considered a crucial phase of the process and the parties do not have a right to be present. (See *People v. Basuta* (2001) 94 Cal.App.4th 370.) The questionnaires will be retained by the court as part of the record of the trial. Shorter cases will be hardshipped in the courtroom.

Prospective jurors will be called to the courtroom in groups of 25-35, depending on the case. The Court will conduct the initial voir dire of the entire group of prospective jurors, then permit questioning by the attorneys. When voir dire by the attorneys is completed, the jurors will be dismissed and told to return later or expect a telephone call, notifying them if they are excused or have been selected as a juror. They are required to leave a phone number that they will answer or be able to quickly return the call.

Cause challenges are considered after each group is dismissed from the courtroom. Once the jurors have been screened for cause, the attorneys will exercise peremptory challenges based on their notes from voir dire and using the random jury list provided by the court. The first 12 qualified jurors in order on the list(s) are "in the jury box." The attorneys can excuse anyone who is "in the box." When a juror is excused, the next available juror on the list moves into "the box." When 12 jurors have been selected (through consecutive passes or use of all peremptories) selection of alternates may be accomplished in a similar manner. When alternates have been selected, the Court will contact all the prospective jurors and notify them they are excused, or they are on the jury and must be present at a certain time to begin trial.

13. Time for jury selection will depend on the circumstances in each individual case. Each side will be given a reasonable opportunity for its initial examination of each panel. If counsel are inefficient with their questioning of prospective witnesses or engage in questioning in impermissible areas, the Court may restrict the time available for questioning. The Court has discretion to place reasonable time limits on jury selection if appropriate. Please respect the jurors' time and use it wisely.

14. Attorney questioning of jurors is limited to that relevant to cause challenges and intelligent exercise of peremptory challenges. (See Code of Civ. Proc., § 223.) No pre-conditioning or educating about the facts or the law will be permitted. The Court may limit attorney questioning *sua sponte* if no objection is made. (Please be aware that the Court will not grant a cause challenge made because a juror stated they were "not comfortable" with a subject or they thought another case would be "a better fit." The standard applied is whether a juror's state of mind prevents or substantially impairs their ability to perform their duties as a juror, not whether a juror is "comfortable.") Jurors are to be addressed by their appropriate prefix and last name, although the Court may require use of juror numbers in certain matters.

Please avoid the following areas during jury questioning:

- Do not repeat any questions previously asked by the Court. Following up with jurors regarding their answers to questions posed by the Court is permitted.
- Do not ask jurors the same question more than once, unless the answer is unclear or ambiguous. Do not attempt to persuade any juror to change an answer by assuring them that "it's ok" to do so or words to that effect.

- Do not question jurors regarding the law, including asking their understanding of jury instructions.
- Do not present hypothetical questions to the jurors. These questions invariably are confusing and unproductive.
- Do not utilize “gotcha” type questions where counsel knows the answer but anticipates that the juror doesn’t, such as “If you were asked to vote now, how would you vote?”
- Do not tell personal stories or make other gratuitous comments intended to ingratiate yourself with the jurors.
- Do not ask jurors if they think another case would be a better fit, or if they think this is not “the right” case for them. It is not their decision, so do not suggest to them that it is.

Voir dire is not a platform for the attorneys to:

- Educate prospective jurors about the case;
- Compel them to commit to a particular disposition of the case;
- Prejudice them for or against a party;
- Argue the case; or,
- Instruct them on matters of law.

Counsel may, with due regard for the foregoing principles, provide the court and all other counsel with a list of case-specific voir dire areas of examination in the event that counsel desires such inquiry conducted by the Court. Following the Court's inquiry into such areas with the venire, counsel may explore the subject(s) further.

The practice of posing a series of substantially identical questions to each individual prospective juror in turn is impermissible as a misuse of scant juror and judicial resources. These questions should be posed to them as a group.

15. Prospective juror lists (random and alphabetical) are the property of the Court and must be returned immediately after jury selection.

16. The parties SHALL prepare a joint list of proposed jury instructions and submit them to the Court. The parties are encouraged to stipulate to jury instructions to the extent possible. The parties shall submit to the Court a list of all proposed CACI instructions and the content of any special instructions (including citations to supporting authority) by the conclusion of jury selection or as otherwise directed by the Court. The parties shall agree as to who will be responsible for preparing the final version of the jury instructions and the verdict form. If the parties cannot agree, the Court will decide.

All instructions will be settled on the record prior to closing arguments. One or more jury instruction conferences will be held before the time for closing arguments. The parties shall submit a joint set of jury instructions prior to the initial jury instruction conference. It is the Court’s practice to instruct the jury prior to closing arguments. The Court makes a strong effort to review and settle any controversial instructions with the attorneys as the trial proceeds.

17. Once the trial begins, it is the duty of all counsel to provide for the appearance of their respective witnesses when they are needed without interruptions of the trial. The Court does not tolerate significant delays or interruptions in the trial once it starts for witness availability problems which could have been avoided with reasonable advance planning.

18. Turn off all cell phones or place them in silent mode while in the courtroom. Vibrate mode is not allowed because it makes an audible sound which is distracting. Counsel SHALL advise all witnesses and any spectators related to the case of this rule.

19. Following empanelment and oath, and prior to opening statements, the court will pre-instruct the jury on applicable instructions from the CACI 100 series.

20. Opening statements are intended to provide the jurors with the attorneys' perspective of the evidence that will be presented in trial. Do not offer argument or opinions regarding the effect of the evidence on the case or your desired verdict.

21. Sidebar conferences are discouraged and will occur only with the approval of the court. However, it is the duty of counsel to anticipate and address any significant, material legal and evidentiary issues which may arise during the trial and bring them to the Court's attention *in limine*. The Court may exercise its discretion to conduct a hearing outside the presence of the jury concerning any objection or response. Once the parties have been permitted to make their respective records and the Court has ruled, there shall be no further discussion on the subject.

22. Zoom/Remote/Video Technology: If the parties agree, the Court is amenable to the use of Zoom or similar technology to allow witnesses to appear remotely at trials. If the parties intend to use remote technology for a witness appearance at a jury trial, they should advise the Court of their request for remote witness appearance on the first day of trial. The Court has an HDMI connection which the parties may use to connect to the Court's monitors and audio system. The Court also has wireless microphones for use.

The Court will not be responsible for any of the logistics, implementation or other technical support necessary for AV use beyond the monitors and audio equipment provided by the Court. The Court's phone, computers and other electronic equipment are OFF LIMITS. **DO NOT ASK.**

23. Any argument, whether procedural, substantive, or evidentiary, shall be made outside the presence of the jury; sidebars should be kept to a minimum. All objections and responses to objections (if invited by the Court) stated by counsel in the presence of the jury shall be limited to the legal grounds for the objections or responses. Counsel shall not make speaking objections, i.e., statements arguing an objection or response beyond the identification of the legal grounds. During examination of witnesses, counsel should not testify, argue or add personal commentary. Speaking objections, witness coaching, testimony in the guise of an "objection", and other self-serving monologues are not permitted. Do not just say the word "objection" and expect the Court to figure it out for you. Do not make up nonexistent grounds for an objection or use a "shotgun" approach and hope the Court picks one for you. You will be overruled.

Counsel shall not make statements to a witness such as "I will represent to you" (that a document says something, or a witness testified to something), or "are you aware that" (some fact is true), or "is it your understanding" (that a record contains certain information), or statements similar in nature. Such topics may be addressed, however, as hypotheticals. It is for the jury to determine whether the predicate facts have been established. Counsel shall not "represent" to the witness, jury or Court that any fact has been established. These comments are testimonial in nature, and counsel may not testify.

Counsel are expected to be familiar with the rules of evidence such as the hearsay rule and exceptions, including the rules regarding case specific hearsay from expert witnesses as established in the case *People v Sanchez*.

24. Exhibits shall not be physically given to the jury (i.e., handed to the jurors) during trial. Instead, enlarged exhibits and projections of exhibits are permitted to be displayed as appropriate during the trial with leave of court.

No exhibit, impeaching or otherwise, shall be referred to by counsel or their client's witness, or shown to the jury, unless first reviewed by all other counsel and permission is obtained from the Court.

No documentary or physical evidence shall be published, displayed or otherwise shown, read, or referred to before the jury until (1) formally marked for identification on the record and (2) permission is obtained from the Court.

25. The court may allow jurors to submit written questions during the questioning of witnesses. "Jurors should be afforded the opportunity to direct any questions they may have to the trial judge, and the judge may properly ask the questions after giving counsel the opportunity to do so or to object." 3 Witkin, Evidence (4th Ed., 2000) § 86, p. 120.

See also, *People v Majors* (1998) 18 Cal.41 385, 406-407, "[i]n a proper case there may be a real benefit from allowing jurors to submit questions [to witnesses] under proper control by the court." See also, CACI 112.

The procedure is as follows: Jurors with written questions will hand them to the bailiff who will hand it to the judge. If not objectionable, the judge will read the question to trial counsel who may decide to ask the question, or not. If counsel decline, the Court may choose to ask the question after giving counsel the opportunity to object. Counsel shall not inquire of the Court which juror posed the question. Counsel may not ask the question (or similar) without the Court's approval.

26. Power-Point presentations may be shown to the jury in opening statements and closing arguments, if they comply with the Court's rulings and all applicable legal principles.

If used in opening statements, a Power-Point may only show evidence reasonably anticipated to be admitted at trial. They must be shared with opposing counsel a minimum of 24 hours before opening statements and any objections resolved before showing them to the jury to avoid any interruption to the presentation. NO ARGUMENT is allowed in opening statements. Objections to slides must be made prior to commencement of trial on the day of opening statements.

The designation CACI, the instruction numbers and the instruction title shall be omitted from any Power-Point slides shown to the jury. For a complete record, a copy of any Power-Point slides shown to the jury in opening statement or closing argument shall be provided to the Court and opposing counsel.

27. During closing argument, DO NOT instruct the jury on any law which is not the subject of a jury instruction that has been approved by the Court for your case.

28. Witness approaches may be made without the court's permission, but counsel are ordered to leave the area of the witness stand immediately once the purpose of the approach has been fulfilled (e.g., once questioning concerning an exhibit has ended). Counsel may not otherwise enter the well without leave of Court. To the extent possible, questioning shall be done from behind counsel table. Do not stand between the witness and the jurors, or block the jurors' view of the witness with exhibits, monitors, etc. You may have a witness step off the witness stand to refer to an exhibit if desired.

29. Any technology (computers, projectors, etc.) shall be set up and tested before the time scheduled for the jury to be present. The Court will permit a brief period to set up before a presentation, but the use of jury time to remedy technical problems with equipment that could have been resolved in advance should be avoided.

30. The identity of witnesses scheduled to testify, and the order of their testimony SHALL be disclosed to opposing counsel at close of business the day before their testimony. Such disclosure shall not be required for impeachment witnesses.

31. Per Evidence Code § 777, all witnesses shall be excluded from the courtroom prior to commencement of opening statements unless otherwise ordered. Counsel shall ensure that their respective witnesses comply with this order.

32. Stipulations - The Court requests the following stipulations from the parties, by and through their respective counsel:

- All jurors and alternates are presumed present at the beginning of each session and at all necessary times, unless an absence is expressly brought to the attention of the court;

- The court's admonition to the jury, after having been given once, shall be deemed to have been given just prior to every recess, adjournment, continuance, or other interruption of the trial;
  - After closing arguments and instructions, alternate jurors may be released (but not excused) by the court subject to recall if needed;
  - After the jury is instructed, Judge Coats, or in his absence, any judge of this court, may respond to written inquiries from members of the jury and may, after notifying counsel, have the court reporter go to the jury room and read portions of the testimony to the jury upon its request;
  - After the jury is instructed and has begun its deliberations, the jurors are permitted to leave the jury deliberation room without notice to counsel, and without requiring the jurors to assemble in the courtroom:
    1. At the end of each deliberation day, for lunch (at the jurors' own expense and unaccompanied by a bailiff or other court personnel), and for other breaks,
    2. Provided that the jurors report to the assigned bailiff their purpose in leaving the jury deliberation room, and the time they plan to return,
    3. And further provided that, upon their return, they report to the assigned bailiff that all 12 jurors are present and that they are resuming their deliberations.
  - Upon the final determination of this action, the Clerk may, without further order of the Court, return any and all exhibits, identifications, depositions, interrogatories, and requests for admission, along with answers and responses thereto, and other stored material, to the party or person(s) who filed, subpoenaed, or moved to have an item marked for identification or admitted into evidence.
  - After a verdict is rendered and entered into the minutes, the time for entry of judgment will be extended 30 days per CCP sections 628, 664 and until a proposed judgment is signed by the Court and entered into the minutes.
33. While the jury is deliberating, and unless alternate arrangements are approved by the trial judge, trial counsel must:
- Be available at all times by telephone; and
  - Be able to return to the courtroom on fifteen (15) minutes' notice.

Please leave a telephone number with the Judicial Assistant at which you can be immediately reached.

34. Entry of Judgment: The Court will direct the prevailing party(ies) to serve and file a proposed judgment(s) consistent with the jury's verdict(s) and in conformity with the Rules of Court and the Code of Civil Procedure.

35. DO NOT email the Court using the Judge's email address under any circumstances. The Court will consider such an email to be an improper ex parte communication and will not read it. Any documents you want the Court to consider must be filed with the Judicial Assistant at your earliest opportunity. If the Court invites or approves receipt of an email from the parties, it shall be sent to this email address: Courtroom43@ventura.courts.ca.gov (attn.: H. McIntyre).

36. It is the Court's firm policy that all counsel, parties, witnesses, jurors and spectators shall be treated by the Court and the courtroom staff in a professional manner with courtesy, politeness and respect at all times. The Court expects the same civility from counsel and the parties. Please refer to the case *Lasalle v. Vogel* (2019) 36 Cal App 5<sup>th</sup> 127 for a discussion of the importance of civility in your chosen profession.