



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 14–15, 2016

Title	Agenda Item Type
Civil Practice and Procedure: Expedited Jury Trials	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 3.1546; amend rules 3.1545 and 3.1547–3.1552; renumber rule 3.1553; adopt new forms EJT-003 and EJT-004; approve new forms EJT-005 and EJT-018; revise and renumber forms EJT-001-INFO and EJT-022A; revise form EJT-020	July 1, 2016
	Date of Report
	March 10, 2016
	Contact
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Recommended by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council amend and revise the California Rules of Court and forms applicable to current voluntary expedited jury trials to reflect statutory amendments to the time frame for those cases, and adopt new rules and forms for the new mandatory expedited jury trials in limited civil cases. These changes are to implement Assembly Bill 555 (Alejo; Stats. 2015, ch. 330), which lifts the sunset provisions in the Expedited Jury Trial Act, which went into effect on January 1, 2011, to establish an expedited jury trial process—a consensual process designed to promote the speedy and economic resolution of cases and to conserve judicial resources. The bill also amends the time frame applicable to such trials from three hours per side to five hours per side, and significantly expands the statute to require expedited jury trials in most limited civil actions other than unlawful detainees. The statute mandates that the new and amended rules and forms be operative by July 1, 2016.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council take the following actions, effective July 1, 2016, to implement the new and amended statutory provisions regarding expedited jury trials:

1. Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553;
2. Adopt new *Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-003) and *Objection to Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-004);
3. Approve new *Order on Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-005), and *Agreement of Parties (Mandatory Expedited Jury Trial Procedures)* (form EJT-018); and
4. Revise and renumber *Expedited Jury Trial Information Sheet* (form EJT-001-INFO) and *Attachment* (form EJT-022A); and
5. Revise [*Proposed*] *Consent Order for Voluntary Expedited Jury Trial* (form EJT-020).

The text of the new and amended rules are attached, beginning at page 13. The new and revised forms are attached beginning at page 21.

Previous Council Action

In 2010, the Legislature passed the Expedited Jury Trials Act, and the council adopted a series of rules and forms to implement that act. Unfortunately, while all stakeholders, including the courts and plaintiff and defense bar organizations, were enthusiastic about the idea of expedited jury trials—consensual trials that were shorter and used smaller juries than traditional civil trials—the procedures have not been used much. In the period from January 2011 through August 2014, fewer than 200 EJTs were reported as having occurred across that state. Twenty-five courts reported that EJTs had not been used in any cases during that period.

Last year, at the request of representatives from California Defense Counsel and Consumer Attorneys of California, the Chief Justice asked the Judicial Council’s Governmental Affairs office to gather together a group of interested parties to examine the issue and consider possible solutions. Discussion among that group eventually led to legislation, Assembly Bill 555,¹ which the council supported. This proposal is to implement that legislation.

¹ AB 555 may be viewed at http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB555.

Rationale for Recommendation

The original expedited jury trial (EJT) process was developed to address litigants' lack of access to the courts in smaller civil cases and the high expense of going to trial under existing civil laws and procedures. It is a consensual process, intended to be quicker and less expensive than a traditional jury trial, saving time and money for all involved: litigants, lawyers, courts, and jurors. The original EJT differs from a regular jury trial in the following key ways:

- *Shorter trial length.* Each side had three hours to put on all its witnesses, show the jury its evidence, and argue its case.
- *Smaller jury.* The jury consists of 8 jurors instead of 12, with no alternates.
- *Faster jury selection process.* The parties exercise fewer peremptory challenges (three per side); and voir dire is limited to 15 minutes per side (plus 15 minutes for the judge).
- *Swifter finality.* All parties had to waive their rights to appeal. In order to help keep down the costs of litigation, there are no appeals following an expedited jury trial except in very limited circumstances.

In order to assure that the parties would be ready to proceed swiftly on the day of trial, the rules provide for pretrial exchanges of exhibits and witnesses and early filing of motions in limine. The EJT process was set up to be very flexible, allowing the parties to enter into agreements governing the rules of procedure for the trial and pretrial exchanges, including the manner and method of presenting evidence and high/low agreements on damages. The scheduling of expedited jury trials and the assignment of judicial officers is left to each superior court. As enacted in 2010, the law included a sunset date of December 31, 2015.

AB 555 deleted the sunset date, thereby extending the EJT process indefinitely. In addition, AB 555 addresses two concerns that were seen as hampering wider use of the EJT process: the extremely short time frame allotted for trial (three hours per side) and the lack of appeal rights. The Legislature ultimately concluded that the current consensual or voluntary EJT procedures should continue, with a longer, five-hour time period for each side at trial (folding jury voir dire into that time). See Code of Civil Procedure section 630.03(e)(2).² The Legislature also concluded that EJTs should be *required* in most smaller civil cases, although with appeal rights,³ and so included provisions for mandatory EJTs in most limited civil cases⁴ (§ 630.20). Parties may opt out of the mandatory EJTs if a limited civil case meets certain criteria. *Id.* AB 555 directs the Judicial Council to develop procedures for opting out, along with other rules and forms appropriate for mandatory EJTs (§ 630.28).

² All statutory references herein are to the Code of Civil Procedure, unless otherwise noted. All rules references are the California Rules of Court.

³ The mandatory EJTs also differ from the voluntary EJTs in that up to four (rather than three) peremptory challenges per side are permitted in mandatory EJTs (§ 630.23(c)).

⁴ Unlawful detainers are expressly exempted from this new statute (§ 630.20(c)).

New and amended rules

The proposal amends the current rules of court on EJTs, beginning at rule 3.1545, to provide for both mandatory EJTs and voluntary EJTs.

Mandatory EJT rule. New rule 3.1546 applies only to mandatory EJTs. It provides that the parties in those cases should follow the pretrial procedures (including the limitations on discovery) and case management procedures that apply to limited civil cases generally. Rule 3.1546(a), (b).

Rule 3.1546(c) sets out the procedures for opting out of a mandatory EJT:

- A newly developed mandatory form must be used to make the request and identify the applicable criteria supporting an opt-out. (See proposed form EJT-003.)
- Generally, the request must be served and filed by at least 45 days before the date first set for trial.⁵
- For cases in which the date first set for trial has already occurred at the time the rule (and the new law) goes into effect on July 1, 2016, the request must be filed at least 45 days before the first date set for trial after July 1.
- Any objection to the request must be served and filed within 15 days after service of the request using a mandatory form. (See proposed form EJT-004.)
- The deadlines each have good cause exceptions so that courts may allow a shorter time frame for making a request or objecting to one when appropriate.⁶
- Should the criteria on which an opt-out is based no longer apply, the parties are to promptly inform the court and the court may return the case to the mandatory EJT procedures.

The rules do not anticipate that a hearing must be held on these requests to opt out, because in most instances the party will have the right to opt out under section 630.20(b) and the request will be routinely granted by the court on the paper filed. Should the court decide a hearing is necessary, the optional order form allows the courts to set one. See proposed form EJT-005.

Rule 3.1546(d) notes that the parties may agree to modify the pretrial and trial procedures (see § 630.23(d) expressly allowing this), and identifies proposed new form EJT-018 and its attachment form as a means to formalize any such agreement.

⁵ That date parallels the earliest date on which a party in a limited civil case may ask the other side for a pretrial statement identifying planned trial witnesses and exhibits. See § 96.

⁶ An Advisory Committee Comment to the new rule notes that the good cause exception is expected to be invoked liberally to allow parties and the courts to handle cases with trial dates within the first couple months following the adoption of the rule, when it will be impossible or very difficult to meet the deadlines for requesting an opt-out or objecting to such a request.

Voluntary EJT rules. The committee also recommends minor amendments to current rules 3.1547 and 3.1548, as described below:

- First, the titles of both rules and pertinent subparts are changed to clarify that they apply only to voluntary EJTs.
- Second, rule 3.1547(b)(1) has been amended to clarify that the requirements of, as well as timelines for, the pretrial submissions may be modified by agreement of the parties. (A similar change has been made to the attachment to the consent order (form EJT-022A.)
- Third, rule 3.1547(b)(4) was amended to change the three-hour time frame for each side's case to a five-hour time frame.
- Finally, an additional item was added to the list of subjects to be considered at the pretrial conference—the issue of how the award of attorney's fees and costs is to be handled in cases with high/low agreements.

Rules applicable to all EJTs. The time limits regarding voir dire (in rule 3.1550) were eliminated and the time frame in rule 3.1551 was amended to reflect the change in the statute. Former rule 3.1546 was moved to this new article and renumbered as rule 3.1553. The remaining trial rules otherwise remain the same, amended only to clarify that they are applicable to both types of EJTs.

New and amended forms

New forms were developed for the opt-out procedure and potential agreements of parties in mandatory EJTs. The current EJT forms are being amended to reflect the increased trial time and to make some of them usable in mandatory EJT cases as well as in voluntary EJT cases.

Expedited Jury Trial Information Sheet (form EJT-001-INFO). The information sheet is renumbered (it had been EJT-010-INFO), so that it will remain the first form in this form series, and has been revised in order to cover both types of expedited jury trials.

Request to Opt Out of Mandatory Expedited Jury Trial Procedures (form EJT-003). This new form is the mandatory form to be used for a request to opt out. There are check boxes for each of the criteria for opting out in § 630.20(b), with separate items for those criteria that permit a party to opt out upon request (630.20(b) 1–8), and for the one criteria that requires a judge to make a finding. See § 630.20(b)(9): a court may allow opt-out for good cause. There is also an item to address any good cause for late filing. The form must be completed under penalty of perjury. The back of the form has instructions for requesting an opt-out and for objecting to such a request, and a reminder that, even after an opt-out has been made, the case may be tried as a mandatory EJT if the grounds for an opt-out are no longer applicable.

Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures (form EJT-004). This new form is a mandatory form that provides spaces to identify the applicant and date of request; state the ground for the objection, either why the asserted criteria for opting out is not

applicable or why the request was not timely; and, if necessary, the good cause for filing a late objection. This form, too, must be completed under penalty of perjury

Order on Request to Opt Out of Mandatory Expedited Jury Trial Procedures (form EJT-005).

This new optional order form may be used by a court in acting on the request, to grant, deny, or set a hearing.

Agreement of Parties (Mandatory Expedited Jury Trial Procedures) (form EJT-018). This is a new form on which parties can memorialize any agreements they reach to modify procedures or streamline the trial, including limiting number of witnesses, etc. This form may be used on its own or as a cover sheet for an attachment form that lists the several areas that had been previously determined to be ripe for modification in EJTs. (See form EJT-022A, previously form EJT-020A.)

[Proposed] Consent Order for Voluntary Expedited Jury Trial (form EJT-020). This form has been amended to clarify that it is for use in voluntary EJTs only, and the references to trial time limits and to various forms have been revised to reflect the amended statutory provisions.

Attachment to [Proposed] Consent Order or Agreement of Parties (form EJT-022A). This form, previously numbered EJT-020A as the attachment to the proposed consent order, has been revised and renumbered so that it can also be used by parties in mandatory EJTs as well.

Comments, Alternatives Considered, and Policy Implications

Comments

The proposal was circulated for public comment from December 11, 2015 through January 22, 2016. Comments were received from several attorney groups⁷ along with three superior courts⁸ and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee (Joint Rules Subcommittee). All agreed with the proposal generally, although some modifications were requested. A chart of all the comments received and the committees' responses to each is attached to this report at pages 32-52. The major points addressed in the comments are summarized below.

Rules regarding the timing of opt-out procedures

As originally proposed and circulated, the procedure for requesting to opt out of the mandatory EJT procedures provided the following:

- For cases filed after July 1, 2016, unless good cause is shown, the request was to be served and filed at least 45 days before the date first set for trial.

⁷ These commenters were the California Defense Counsel, Consumer Attorneys of California, Orange County Bar Association, and two State Bar groups, the Litigation Section and the Committee on the Administration of Justice.

⁸ The courts commenting were the Superior Courts of Los Angeles, Riverside, and San Diego Counties.

- For cases already on file on July 1, the time the rule and the new law become operative, parties were to file any opt-out request at least 10 days before trial.
- Any objection to the request must be served and filed within 15 days after service of the request using a mandatory form.

The invitation to comment asked for specific comments on this proposed timing: was the deadline for opting out appropriate, or should it be at an earlier point in the case? The majority of commenters, agreed with the 45-days-before-trial deadline generally. The Superior Court of Los Angeles County and the Joint Rules Subcommittee both noted that an earlier opt-out deadline might force parties to opt out of mandatory EJT's when they are undecided as to whether to remain within that process, while the same parties might remain in the process if they can wait until most discovery has concluded before making the decision.

Orange County Bar Association did not disagree with having the deadline close to the end of the action, but would have preferred a slightly longer lead time before trial, suggesting that a party should have notice at least 20 to 30 days before trial of whether a traditional jury will be used and longer trial is anticipated; they proposed that a 60-day-before-trial deadline be used. The committee disagrees that the additional two weeks' notice would make much difference, and continues to recommend the 45-day deadline. The committee particularly likes that the deadline is the day on which the parties may first ask for a pretrial exchange of witness and exhibit lists (§ 96), so is set at a time when the parties should be making decisions about the future trial.

That same commenter suggested that another way to assure sufficient notice to the parties was to mandate how quickly the court must act on the request to opt out. The committee disagrees with this suggestion for two reasons. First, most of the criteria for opting out are objective factors, the existence of which by statute permit a party to opt out of the mandatory EJT procedures. (See § 630.20(b)(1)–(8).) Therefore as soon as a party is served with such a request, the party will generally know whether the opt-out will be granted. Second, setting a specific number of days in which the court must act is micromanaging judicial officers, when there has been no indication that such management is required. There is no reason to believe that courts will delay action on any of these requests, even those requiring a judicial finding (the opt-out requests based on a claim of good cause). Further, mandating that the court must act within a certain period or that a request to opt out would be granted by default would not be in keeping with the goal of the Legislature to have more cases tried by EJT. On the other hand, having the result of a court's failure to act within the given time be that the opt out is automatically denied would not conform with the statutory provision that permits parties to opt out so long as certain criteria are met. Since there is no basis at this point for assuming courts will be dilatory in acting on opt-out requests, the committee declines to recommend a rule mandating a specific time in which the court must act.

The State Bar's Committee on Administration of Justice (CAJ) was the one commenter that suggested that opt-outs should take place a longer time before trial, noting that otherwise there is a risk of game-playing. The commenter noted that if a party does not opt out until the 45 days

before trial, there may be an assumption that the case will be tried as an EJT and prepared accordingly, and then surprised at the end of the case when the other side opts out of the EJT process and the case becomes a traditional jury trial. While it is true that with an earlier deadline, the parties would know from earlier in the case whether they were likely to be engaging in an EJT, the committee considered, but rejected, this alternative when it was originally developing the rule, and continues to do so now. The committee noted that the existence of some of the criteria could change over the course of a case, leading it to conclude that a later deadline for opting out would be more useful for both courts and parties. Moreover, pretrial procedures in these limited civil actions, including limitations on discovery, will remain the same whether or not the eventual trial is an EJT. The primary impacts of opting out of the mandatory EJT procedures will be that the regular jury trial will use more jurors at trial and may take somewhat longer to try than the two to three days an EJT will take. In light of these considerations, the committee concludes there was not good reason to limit a party's ability to opt out too early in the case.

Two commenters noted that the rules as originally proposed, with a deadline of only 10 days before trial for requesting an opt-out in cases filed before July 1, 2016, but no shortening of the deadline for objecting to the requests in those cases, could result in the deadline for objections occurring after the trial date. One suggestion was to fix this by increasing the amount of time before trial for making the request in such cases. The committee agrees with that suggestion.

The reason for having different deadlines for cases filed before and after July 1, 2016, was the committee's recognition that, for many cases pending on July 1 (the operative date of the new law mandating EJTs), the proposed deadline of "45 days before the date first set for trial" will already have passed. Those cases may already have been continued past the first or even second trial date. And some will have trial dates occurring within a short time after July 1. The rule as originally circulated, was an attempt to cover as many of those cases as possible. In reviewing the issue, the committee concludes that a better way to deal with this issue is to apply the same 45-day deadline to all cases, counting back from the date first set for trial where possible, and counting back from the next trial date if the first date has already occurred. See proposed rule 3.1546(c)(2). For those cases that have trials set within the first 45 days after the law and rules go into effect, there will clearly be good cause for the court to allow late filing. The committee has noted this issue, and the use of the good cause exemption to address it, in an Advisory Committee Note.

Returning a case to mandatory EJT procedures

In developing the opt-out procedures, the committee considered whether it should develop a rule to clarify that, after a party has opted out of the mandatory EJT procedures based on a case meeting one or more of the conditions in section 630.20(b), a court may return the case to mandatory EJT status should the relevant conditions no longer apply. The committee asked for comments on whether such a rule should be adopted, to clarify that a case may be returned to mandatory EJT status when appropriate, even after an opt-out has been approved by the court.

All commenters⁹ who responded on this issue agreed that, while the court clearly has the authority to take such action, a rule clarifying this point would be a good way to remind parties of that. One commenter, California Defense Counsel, also suggested that there should be some mechanism where the party who opts out affirms that the basis for the opt-out still exists before proceeding to trial.

In light of the comments received, the committee modified the rules to include a provision that the court may have a case tried as an mandatory EJT if the criteria supporting an opt-out no longer apply, and mandating that the parties inform a court promptly if that occurs. See proposed rule 3.1546(c)(4). At the suggestion of the Orange County Bar Association, the committee also added a new instruction to the opt-out request form, notifying the parties of these provisions. See form EJT-003, Instructions, item 7.

The committee considered placing some kind of deadline or notice requirement on returning a case to mandatory EJT status, in light of suggestions received from several of the bar group commenters, but concluded that such cases will need to be handled by courts on an individual basis, depending on the facts and timing involved, and so has not set any mandatory time frames for the court.

Comments on new EJT forms

In addition to the new instruction added to the request for opt-out forms, several other suggestions for modification of the forms were made by the commenters, all of which were accepted by the committee. The more substantive ones are described here.

- ***Request to Opt Out of Mandatory Expedited Jury Trial (form EJT-003)***

At the suggestion of Consumer Attorneys of California, item 2 on the form, the item stating grounds for opting out, was divided into two subparts, with the only ground requiring a determination by the court (good cause) set out as separate from the grounds that automatically result in an opt-out upon request. At the same time, the committee added to item 2(b) the statutory language about good cause including situations where a party believes a case needs more time and the other party won't stipulate to that.

At the suggestion of California Defense Counsel, a further instruction was added to the back of the form, to clarify that no documentary evidence need be submitted with the opt-out request.

- ***Objection to Request to Opt Out of Mandatory Expedited Jury Trial (form EJT-004)***

At the suggestion of the Litigation Section of the State Bar, the items on the form were reorganized. Because original items 3 and 4 were really just two bases for objecting to the opt-out request, they have been made subparts of a single item. The committee has also added a new item 4 to the form to allow an objector to show good cause for late filing.

⁹ California Defense Counsel, State Bar Litigation Section, State Bar Committee on Administration of Justice, Superior Court of San Diego, and Orange County Bar Association (OCBA) provided comments on this point.

- ***Agreement of Parties (Mandatory Expedited Jury Trial Procedures) (form EJT-018)***
The Superior Court of Orange County pointed out that the item for the judge to check if denying the stipulation of the parties referred to a proposed consent order being denied, but that this new form was titled an agreement of the parties, rather than an order. The different title was used to differentiate it from the current *Proposed Consent Order* form for voluntary EJTs. The language in the final item on the form has now been modified.

Voluntary expedited jury trials

The proposal as circulated also made minor amendments to the rules regarding *voluntary* expedited jury trials, and minor revisions to the forms for those cases. No comments were received on those parts of the proposal, and the committee is proceeding with the recommendation as circulated.

In developing the new rules for the mandatory EJTs, the committee also considered whether it should also recommend amendments to simplify the voluntary EJT procedures, which some had complained of as overly complicated and burdensome. The invitation to comment included a request for specific comments on this point; whether those rules should be made simpler. The consensus of those who responded to this request, California Defense Counsel, Orange County Bar Association, and the two state bar committee commenters, was to leave the rules regarding voluntary EJTs as they were.

Potential policy implications of the new statute

Although not raised in the formal comments, a judicial officer has informally raised a question with the committee about the impact of new section 630.020(a)¹⁰ and whether, on its face, it mandates that all trials in limited civil cases be conducted as mandatory EJTs, with bench trials no longer permitted other than in cases in which the parties have opted out or which are not covered by this new law (i.e., unlawful detainer cases).

The committee notes that this interpretation of the statute does not appear to conform with the intent of the authors. The legislative history of the bill does not indicate that there was any intent to eliminate these bench trials in limited civil cases. Discussions of EJTs in the various committee analyses address the benefits of such procedures as compared to regular jury trials, but nowhere compare them to bench trials, or mention bench trials at all.¹¹ Considering that in fiscal year 2013–2014 there were over 31,000 bench trials in limited civil cases in California, and only 219 jury trials in such cases, bench trials would have been the subject of discussion in legislative analyses if the bill was intended to eliminate such trials.

¹⁰ 630.20 (a). Except as provided in subdivisions (b) and (c), **an action or special proceeding treated as a limited civil case** pursuant to Article 1 (commencing with Section 85) of Chapter 5.1 of Title 1 of Part 1, including an action or special proceeding initially filed as a limited civil case or remanded as one thereafter, **shall be conducted as a mandatory expedited jury trial pursuant to this chapter** . . .(emphasis added)

¹¹ The bill analyses by the various Senate and Assembly committees may be viewed here: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB555.

Moreover, the law regarding waiving jury trials has not been modified by the new law. Article I Section 6 of the California Constitution provides that “[i]n a civil case, a jury may be waived only by consent of the parties expressed as prescribed by statute.” Section 631(a) states that a party may waive a jury trials only by the means described in section 631(f). That section prescribes several ways in which such waiver is made, including, among other methods, by failing to announce that a jury is required at the time the case is first set for trial; or by failing to pay a jury fee at the time of the initial case management conference; or, if no case management conference is scheduled, within 165 days after the complaint was filed. Nothing was included in AB 555 to modify this code section so that it would not apply in limited civil proceedings where mandatory EJT are to become the norm. The lack of any modification to section 631 appears to be yet another indicator that the Legislature did not intend to eliminate bench trials in limited civil cases.

Alternatives considered

Because the Legislature mandated that new rules and procedures be developed to reflect the changes to the voluntary EJT provisions and the enactment of the new mandatory EJT provisions, the committee did not consider *whether* to develop new rules and forms, but merely how to do so.

Pretrial Procedures for Mandatory EJTs

The committee considered making the current rules regarding mandatory pretrial conferences and pretrial submissions for voluntary EJTs (see rule 3.1548) applicable to mandatory EJTs as well. The committee decided, however, that those rules—particularly the mandated pretrial conference shortly before trial—would be overly burdensome if required in all limited civil cases, and declined to do so. The committee decided instead that mandatory EJT cases should comply with the existing statutory pretrial provisions for limited civil cases, which provide for limited discovery in such cases and the potential of a pretrial exchange of witness and exhibit lists. See sections 90–100.

The committee also considered the alternative of requiring that parties make any request to opt out of a mandatory EJT early in the action, tying the deadline to the time for case management review, for example, or to a set number of days after filing. As discussed above, the committee concluded that a deadline later in the case was preferable.

Pretrial Procedures for Voluntary EJTs

As noted above, the committee considered amending the current pretrial rule for voluntary EJTs (rule 3.1548) in light of concerns raised that the early deadlines for pretrial exchanges and the mandatory pretrial conferences were burdensome, particularly in smaller cases, and discouraged parties from agreeing to EJTs. Some members noted that the current rules were often not complied with because many voluntary EJTs were agreed to just before trial, after the time in the rule for exchanges and submissions had already passed. The committee decided to defer proposing any amendments to that provision at this time, focusing instead on the new mandatory

EJTs. In light of the comments received on this issue, the committee is not considering further recommendations in that area at this time. The consensus of all those who responded to this request for comment was that the current rules on pretrial procedures for voluntary EJTs need not be changed, due in part to their currently flexibility, allowing parties to change the provisions on stipulation.

Implementation Requirements, Costs, and Operational Impacts

The statutory changes in AB 555 will require significant education of judicial officers and courtroom personnel in any event, regarding the mandatory EJTs that will be held in many limited civil cases starting in July 2016, as well as the criteria for parties to be able to opt out of that type of trial. The new rules and forms relating to requests to opt out are intended to simplify the process, but they will also result in further training needs for court personnel and judicial officers. Those courts that decide to add the optional order form to their computerized case management system will have the added cost of doing that, but it is recommended as an optional form so that courts can make the decision.

Attachments and Links

1. Cal. Rules of Court, rules 3.1545–3.1553, at pages 13–20
2. Judicial Council forms EJT-001-INFO, EJT-003, EJT-004, EJT-005, EJT-018, EJT-020, and EJT-022A, at pages 21–31
3. Chart of comments, at pages 32–52

Rules 3.1545 and 3.1547–3.1552 of the California Rules of Court are amended, rule 3.1546 is adopted, and rule 3.1553 is renumbered, effective July 1, 2016, to read:

Division 15. Trial

Chapter 4.5. Expedited Jury Trials

Article 1. Applicability

Rule 3.1545. Expedited jury trials

(a) Application

The rules in this chapter apply to civil actions in which the parties either:

(1) Agree to an a voluntary expedited jury trial under chapter 4.5 (commencing with section 630.01) of title 8 of part 2 of the Code of Civil Procedure, or

(2) Are required to take part in an expedited jury trial under chapter 4.6 (commencing with section 630.20) of title 8 of part 2 of the Code of Civil Procedure.

(b) Definitions

As used in this chapter, unless the context or subject matter otherwise requires:

(1) “Consent order” means the consent order granting an expedited jury trial described in Code of Civil Procedure section 630.03.

(2) “Expedited jury trial” is a short jury trial before a reduced jury panel, and may be either a “mandatory expedited jury trial” or a “voluntary expedited jury trial.”

(3) “Mandatory expedited jury trial” has the same meaning as stated in Code of Civil Procedure section 630.21.

(4) “Voluntary expedited jury trial” has the same meaning as stated for “expedited jury trial” in Code of Civil Procedure section 630.01.

(5) ~~“Expedited jury trial”~~ “High/low agreement” and “posttrial motions” have the same meanings as stated in Code of Civil Procedure section 630.01.

(c) Other programs

This chapter does not limit the adoption or use of other expedited trial or alternative dispute resolution programs or procedures.

1
2 **Article 2. Rules Applicable Only to Cases with Mandatory Expedited Jury Trials**
3

4 **Rule 3.1546. Pretrial procedures for mandatory expedited jury trials**
5

6 **(a) Pretrial procedures**
7

8 The pretrial procedures for limited civil actions set out in Code of Civil Procedure sections
9 90–100 are applicable to all cases with mandatory expedited jury trials. The statutory
10 procedures include limited discovery, optional case questionnaires, optional requests for
11 pretrial statements identifying trial witnesses and exhibits, and the possibility of presenting
12 testimony in the form of affidavits or declarations.
13

14 **(b) Case management**
15

16 The case management rules in chapter 3 of division 7 of these rules, starting at rule 3.720,
17 are applicable to all cases with mandatory expedited jury trials, except to the extent the
18 rules have been modified by local court rules applicable to limited civil cases.
19

20 **(c) Opting out of mandatory expedited jury trial procedures**
21

22 (1) Parties seeking to opt out of mandatory expedited jury trial procedures on grounds
23 stated in Code of Civil Procedure section 630.20(b) must file a *Request to Opt Out of*
24 *Mandatory Expedited Jury Trial Procedures* (form EJT-003).
25

26 (2) Except on a showing of good cause, the request to opt out must be served and filed at
27 least 45 days before the date first set for trial or, in cases in which the date first set for
28 trial occurred before July 1, 2016, 45 days before the first trial date after July 1, 2016.
29

30 (3) Except on a showing of good cause, any objection to the request must be served and
31 filed within 15 days after the date of service of the request, on an *Opposition to*
32 *Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-004).
33

34 (4) If the grounds on which a party or parties have opted out of mandatory expedited jury
35 trial procedures no longer apply to a case, the parties must promptly inform the court,
36 and the case may be tried as a mandatory expedited jury trial.
37

38 **(d) Agreements regarding pretrial and trial procedures**
39

40 Parties are encouraged to agree to procedures or limitations on pretrial procedures and on
41 presentation of information at trial that could streamline the case, including but not limited
42 to those items described in rule 3.1547(b). The parties may use *Agreement of Parties*
43 *(Mandatory Expedited Jury Trial Procedures)* (form EJT-018) and the attachment (form
44 EJT-022A) to describe such agreements.
45

1 Advisory Committee Comment

2
3 Because Code of Civil Procedure section 630.20, which becomes operative July 1, 2016, applies to cases
4 already on file and possibly already set for trial, as well as cases filed after the statutory provisions go into
5 effect, the deadlines in rule 3.1546(c) for opt outs and objections may be problematic as applied to cases
6 set for trial within the first couple of months after the rule goes into effect. It is expected that the good
7 cause provisions within the rules regarding deadlines, along with judicious use of continuances as
8 appropriate, will be liberally used to permit courts to manage those cases fairly, appropriately, and
9 efficiently.

10
11
12 **Article 3. Rules Applicable Only to Cases with Voluntary Expedited Jury Trials**

13
14 **Rule 3.1547. Consent order for voluntary expedited jury trial**

15
16 **(a) Submitting proposed consent order to the court**

- 17
18 (1) Unless the court otherwise allows, to be eligible to participate in ~~an~~ a voluntary
19 expedited jury trial, the parties must submit to the court, no later than 30 days before
20 any assigned trial date, a proposed consent order granting an expedited jury trial.
21
22 (2) The parties may enter into written stipulations regarding any high/low agreements or
23 other matters. Only in the following circumstances may a high/low agreement be
24 submitted to the court with the proposed consent order or disclosed later in the
25 action:
26
27 (A) Upon agreement of the parties;
28
29 (B) In any case involving either
30
31 (i) A self-represented litigant, or
32
33 (ii) A minor, an incompetent person, or a person for whom a conservator has
34 been appointed; or
35
36 (C) If necessary for entry or enforcement of the judgment.

37
38 **(b) Optional content of proposed consent order**

39
40 In addition to complying with the provisions of Code of Civil Procedure section 630.03(e),
41 the proposed consent order may include other agreements of the parties, including the
42 following:

- 43
44 (1) Modifications of the requirements or timelines for pretrial submissions required by
45 rule 3.1548;
46

- 1 (2) Limitations on the number of witnesses per party, including expert witnesses;
- 2
- 3 (3) Modification of statutory or rule provisions regarding exchange of expert witness
- 4 information and presentation of testimony by such witnesses;
- 5
- 6 (4) Allocation of the time periods stated in rule 3.1550 including how arguments and
- 7 cross-examination may be used by each party in the ~~three~~ five-hour time frame;
- 8
- 9 (5) Any evidentiary matters agreed to by the parties, including any stipulations or
- 10 admissions regarding factual matters;
- 11
- 12 (6) Any agreements about what constitutes necessary or relevant evidence for a
- 13 particular factual determination;
- 14
- 15 (7) Agreements about admissibility of particular exhibits or demonstrative evidence that
- 16 are presented without the legally required authentication or foundation;
- 17
- 18 (8) Agreements about admissibility of video or written depositions and declarations;
- 19
- 20 (9) Agreements about any other evidentiary issues or the application of any of the rules
- 21 of evidence;
- 22
- 23 (10) Agreements to use photographs, diagrams, slides, electronic presentations, overhead
- 24 projections, notebooks of exhibits, or other methods for presenting information to the
- 25 jury;
- 26
- 27 (11) Agreements concerning the time frame for filing and serving motions in limine; and
- 28
- 29 (12) Agreements concerning numbers of jurors required for jury verdicts in cases with
- 30 fewer than eight jurors.
- 31

32 **Rule 3.1548. Pretrial submissions for voluntary expedited jury trials**

33

34 **(a) Service**

35

36 Service under this rule must be by a means consistent with Code of Civil Procedure

37 sections 1010.6, 1011, 1012, and 1013 or rule 2.251 and be reasonably calculated to assure

38 delivery to the other party or parties no later than the close of business on the last

39 allowable day for service as specified below.

40

41 **(b) Pretrial exchange for voluntary expedited jury trials**

42

43 Unless otherwise agreed by the parties, no later than 25 days before trial, each party must

44 serve on all other parties the following:

45

- 1 (1) Copies of any documentary evidence that the party intends to introduce at trial
2 (except for documentary evidence to be used solely for impeachment or rebuttal),
3 including, but not limited to, medical bills, medical records, and lost income records;
4
- 5 (2) A list of all witnesses whom the party intends to call at trial, except for witnesses to
6 be used solely for impeachment or rebuttal, and designation of whether the testimony
7 will be in person, by video, or by deposition transcript;
8
- 9 (3) A list of depositions that the party intends to use at trial, except for depositions to be
10 used solely for impeachment or rebuttal;
11
- 12 (4) A copy of any audiotapes, videotapes, digital video discs (DVDs), compact discs
13 (CDs), or other similar recorded materials that the party intends to use at trial for
14 evidentiary purposes, except recorded materials to be used solely for impeachment or
15 rebuttal and recorded material intended to be used solely in closing argument;
16
- 17 (5) A copy of any proposed jury questionnaires (parties are encouraged to agree in
18 advance on a questionnaire);
19
- 20 (6) A list of proposed approved introductory instructions, pre-instructions, and
21 instructions to be read by the judge to the jury;
22
- 23 (7) A copy of any proposed special jury instructions in the form and format described in
24 rule 2.1055;
25
- 26 (8) Any proposed verdict forms;
27
- 28 (9) A special glossary, if the case involves technical or unusual vocabulary; and
29
- 30 (10) Motions in limine.

31
32 **(c) Supplemental exchange for voluntary expedited jury trials**

33
34 No later than 20 days before trial, a party may serve on any other party any additional
35 documentary evidence and a list of any additional witnesses whom the party intends to use
36 at trial in light of the exchange of information under (b).
37

38 **(d) Submissions to court for voluntary expedited jury trials**

39
40 No later than 20 days before trial, each party must file all motions in limine and must lodge
41 with the court any items served under (b)(2)–(9) and (c).
42

43 **(e) Preclusionary effect**

44
45 Unless good cause is shown for any omission, failure to serve documentary evidence as
46 required under this rule will be grounds for preclusion of the evidence at the time of trial.

1
2 **(f) Pretrial conference for voluntary expedited jury trials**
3

4 No later than 15 days before trial, unless that period is modified by the consent order, the
5 judicial officer assigned to the case must conduct a pretrial conference, at which time
6 objections to any documentary evidence previously submitted will be ruled on. If there are
7 no objections at that time, counsel must stipulate in writing to the admissibility of the
8 evidence. Matters to be addressed at the pretrial conference, in addition to the evidentiary
9 objections, include the following:

- 10
11 (1) Any evidentiary matters agreed to by the parties, including any stipulations or
12 admissions regarding factual matters;
13
14 (2) Any agreement of the parties regarding limitations on necessary or relevant
15 evidence, including any limitations on expert witness testimony;
16
17 (3) Any agreements of the parties to use photographs, diagrams, slides, electronic
18 presentations, overhead projections, notebooks of exhibits, or other methods of
19 presenting information to the jury;
20
21 (4) Admissibility of any exhibits or demonstrative evidence without legally required
22 authentication or foundation;
23
24 (5) Admissibility of video or written depositions and declarations and objections to any
25 portions of them;
26
27 (6) Objections to and admissibility of any recorded materials that a party has designated
28 for use at trial;
29
30 (7) Jury questionnaires;
31
32 (8) Jury instructions;
33
34 (9) Special verdict forms;
35
36 (10) Allocation of time for each party's case; ~~and~~
37
38 (11) Motions in limine filed before the pretrial conference; and
39
40 (12) The parties' intention on how any high/low agreement will affect an award of fees
41 and costs.
42

43 **(g) Expert witness documents**
44

45 Any documents produced at the deposition of an expert witness are deemed to have been
46 timely exchanged for the purpose of (c) above.

1
2 **Article 3. Rules Applicable to All Expedited Jury Trials**
3

4 **Rule 3.1549 Voir dire**
5

6 ~~Approximately one hour will be devoted to voir dire, with 15 minutes allotted to the judicial~~
7 ~~officer and 15 minutes to each side.~~ Parties are encouraged to submit a joint form questionnaire
8 to be used with prospective jurors to help expedite the voir dire process.
9

10 **Rule 3.1550. Time limits**
11

12 ~~Excluding~~ Including jury selection ~~voir dire~~, each side will be allowed ~~three~~ five hours to present
13 its case, including opening statements and closing arguments, unless the court, upon a finding of
14 good cause, allows additional time. The amount of time allotted for each side includes the time
15 that the side spends on cross-examination. The parties are encouraged to streamline the trial
16 process by limiting the number of live witnesses. The goal is to complete an expedited jury trial
17 within ~~one full~~ two trial days.
18

19 **Rule 3.1551. Case presentation**
20

21 **(a) Methods of presentation**
22

23 Upon agreement of the parties and with the approval of the judicial officer, the parties may
24 present summaries and may use photographs, diagrams, slides, electronic presentations,
25 overhead projections, individual notebooks of exhibits for submission to the jurors, or
26 other innovative methods of presentation approved at the pretrial conference.
27

28 **(b) Exchange of items**
29

30 Anything to be submitted to the jury under (a) as part of the evidentiary presentation of the
31 case in chief must be exchanged 20 days in advance of the trial, unless that period is
32 modified by the consent order or agreement of the parties. This rule does not apply to items
33 to be used solely for closing argument.
34

35 **(c) Stipulations regarding facts**
36

37 The parties should stipulate to factual and evidentiary matters to the greatest extent
38 possible.
39

40 **Rule 3.1552. Presentation of evidence**
41

42 **(a) Stipulations regarding rules of evidence**
43

44 The parties may offer such evidence as is relevant and material to the dispute. An
45 agreement to modify the rules of evidence for the trial made pursuant to the expedited jury
46 trial statutes commencing with Code of Civil Procedure section 630.01 may be included in

1 the consent order or agreement of the parties. To the extent feasible, the parties should
2 stipulate to modes and methods of presentation that will expedite the process, either in the
3 consent order or at the pretrial conference.
4

5 **(b) Objections**
6

7 Objections to evidence and motions to exclude evidence must be submitted in a timely
8 manner. Except as provided in rule 3.1548(f), failure to raise an objection before trial does
9 not preclude making an objection or motion to exclude at trial.
10

11 **Rule ~~3.1553~~3.1546. Assignment of judicial officers**
12

13 The presiding judge is responsible for the assignment of a judicial officer to conduct an
14 expedited jury trial. The presiding judge may assign a temporary judge appointed by the court
15 under rules 2.810–2.819 to conduct an expedited jury trial. A temporary judge requested by the
16 parties under rules 2.830–2.835, whether or not privately compensated, may not be appointed to
17 conduct ~~an~~ a voluntary expedited jury trial.
18

EJT-001-INFO Expedited Jury Trial Information Sheet

This information sheet is for anyone involved in a civil lawsuit who will be taking part in an **expedited jury trial**—a trial that is shorter and has a smaller jury than a traditional jury trial.

You can find the law and rules governing expedited jury trials in Code of Civil Procedure sections 630.01–630.29 and in rules 3.1545–3.1553 of the California Rules of Court. You can find these at any county law library or online. The statutes are online at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. The rules are at www.courts.ca.gov/rules.

1 What is an expedited jury trial?

An expedited jury trial is a short trial, generally lasting only one or two days. It is intended to be quicker and less expensive than a traditional jury trial.

As in a traditional jury trial, a jury will hear your case and will reach a decision about whether one side has to pay money to the other side. An expedited jury trial differs from a regular jury trial in several important ways:

- **The trial will be shorter.** Each side has 5 hours to pick a jury, put on all its witnesses, show the jury its evidence, and argue its case.
- **The jury will be smaller.** There will be 8 jurors instead of 12.
- **Choosing the jury will be faster.** The parties will exercise fewer challenges.

2 What cases have expedited jury trials?

- **Mandatory expedited jury trials.** All limited civil cases—cases where the demand for damages or the value of property at issue is \$25,000 or less—come within the *mandatory expedited jury trial* procedures. These can be found in the Code of Civil Procedure, starting at section 630.20. Unless your case is an unlawful detainer (eviction) action, or meets one of the exceptions set out in the statute, it will be within the expedited jury trial procedures. These exceptions are explained more in 7 below.
- **Voluntary expedited jury trials.** If your civil case is not a limited civil case, or even if it is, you can choose to take part in a *voluntary expedited jury trial*, if all the parties agree to do so. Voluntary expedited jury trials have the same shorter time frame and smaller jury that the

mandatory ones do, but have one other important aspect—**all parties must waive their rights to appeal.** In order to help keep down the costs of litigation, there are no appeals following a *voluntary* expedited jury trial except in very limited circumstances. These are explained more fully in 9.

3 Will the case be in front of a judge?

The trial will take place at a courthouse and a judge, or, if you agree, a temporary judge (a court commissioner or an experienced attorney that the court appoints to act as a judge) will handle the trial.

4 Does the jury have to reach a unanimous decision?

No. Just as in a traditional civil jury trial, only three-quarters of the jury must agree in order to reach a decision in an expedited jury trial. With 8 people on the jury, that means that at least 6 of the jurors must agree on the verdict in an expedited jury trial.

5 Is the decision of the jury binding on the parties?

Generally, yes, but not always. A verdict from a jury in an expedited jury trial is like a verdict in a traditional jury trial. The court will enter a judgment based on the verdict, the jury's decision that one or more defendants will pay money to the plaintiff or that the plaintiff gets no money at all.

But parties in an expedited jury trial, like in other kinds of trials, are allowed to make an agreement before the trial that guarantees that the defendant will pay a certain amount to the plaintiff even if the jury decides on a lower payment or no payment. That agreement may also put a cap on the highest amount that a defendant has to pay, even if the jury decides on a higher amount. These agreements are known as “high/low agreements.” You should discuss with your attorney whether you should enter into such an agreement in your case and how it will affect you.

6 How else is an expedited jury trial different?

The goal of the expedited jury trial process is to have shorter and less expensive trials.

- The cases that come within the mandatory expedited jury trial procedures are all limited civil actions, and they must proceed under the limited discovery and



pretrial rules that apply to those actions. See Code of Civil Procedure sections 90–100.

- The voluntary expedited jury trial rules set up some special procedures to help those cases have shorter and less expensive trials. For example, the rules require that several weeks before the trial takes place, the parties show each other all exhibits and tell each other what witnesses will be at the trial. In addition, the judge will meet with the attorneys before the trial to work out some things in advance.

The other big difference is that the parties in either kind of expedited jury trial can make agreements about how the case will be tried so that it can be tried quickly and effectively. These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need the jury to decide. The parties can agree to modify many of the rules that apply to trials generally or to any pretrial aspect of the expedited jury trials.

7 Do I have to have an expedited jury trial if my case is for \$25,000 or less?

Not always. There are some exceptions.

- The mandatory expedited jury trial procedures do not apply to any unlawful detainer or eviction case.
- Any party may ask to opt out of the procedures if the case meets any of the criteria set out in Code of Civil Procedure section 630.20(b), all of which are also described in item 2 of the *Request to Opt Out of Mandatory Expedited Jury Trial* (form EJT-003). Any request to opt out must be made on that form, and it must be made within a certain time period, as set out in Cal. Rules of Court, rule 3.1546(c). Any opposition must be filed within 15 days after the request has been served.

The remainder of this information sheet applies only to voluntary expedited jury trials.

8 Who can take part in a voluntary expedited jury trial?

The process can be used in any civil case that the parties agree may be tried in one or two days. To have a voluntary expedited jury trial, both sides must want one. Each side must agree to all the rules described in 1, and to waive most appeal rights. The agreements between the parties must be put into writing in a

document called *[Proposed] Consent Order for Voluntary Expedited Jury Trial*, which will be submitted to the court for approval. (Form EJT-020 may be used for this.) The court must issue the consent order as proposed by the parties unless the court finds good cause why the action should not proceed through the expedited jury trial process.

9 Why do I give up most of my rights to an appeal in a voluntary expedited jury trial?

To keep costs down and provide a faster end to the case, all parties who agree to take part in a voluntary expedited jury trial must agree to waive the right to appeal the jury verdict or decisions by the judicial officer concerning the trial unless one of the following happens:

- Misconduct of the judicial officer that materially affected substantial rights of a party;
- Misconduct of the jury; or
- Corruption or fraud or some other bad act that prevented a fair trial.

In addition, parties may not ask the judge to set the jury verdict aside, except on those same grounds. Neither you nor the other side will be able to ask for a new trial on the grounds that the jury verdict was too high or too low, that legal mistakes were made before or during the trial, or that new evidence was found later.

10 Can I change my mind after agreeing to a voluntary expedited jury trial?

No, unless the other side or the court agrees. Once you and the other side have agreed to take part in a voluntary expedited jury trial, that agreement is binding on both sides. It can be changed only if **both** sides want to change it or stop the process or if a court decides there are good reasons the voluntary expedited jury trial should not be used in the case. This is why it is important to talk to your attorney **before** agreeing to a voluntary expedited jury trial. This information sheet does not cover everything you may need to know about voluntary expedited jury trials. It only gives you an overview of the process and how it may affect your rights. **You should discuss all the points covered here and any questions you have about expedited jury trials with an attorney before agreeing to a voluntary expedited jury trial.**

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 03/10/16 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES	CASE NUMBER:

See instructions on back.

1. (Name of party): _____ requests to opt out of the mandatory expedited jury trial procedures in this case because it meets one of the criteria set forth in Code of Civil Procedure section 630.20(b).

2. The ground for asking to opt out is (check one or more of the following grounds from Code of Civil Procedure section 630.20(b)):

a. Grounds on which a party may choose to opt out of an expedited jury trial.

- (1) Punitive damages are sought in the case. (§ 630.20(b)(1).)
- (2) Damages in excess of insurance policy limits are sought in the case. (§ 630.20(b)(2).)
- (3) A party's insurer is providing a legal defense subject to a reservation of rights. (§ 630.20(b)(3).)
- (4) The case involves a claim reportable to a governmental entity. (§ 630.20(b)(4).)
- (5) The case involves a claim of moral turpitude that may affect an individual's professional license. (§ 630.20(b)(5).)
(Identify the individual and the license):
- (6) The case involves claims of intentional conduct. (§ 630.20(b)(6).)
- (7) The case has been reclassified as unlimited pursuant to Code of Civil Procedure section 403.020. (§ 630.20(b)(7).)
- (8) The complaint contains a demand for attorney's fees other than fees sought under Civil Code section 1717. (§ 630.20(b)(8).) (A complaint seeking attorney's fees provided for in a contract is not exempt.)

b. Ground on which the judge must make a finding. (Note that good cause includes, but is not limited to, a showing that a party needs more than five hours to present or defend the action and the parties have been unable to stipulate to additional time.)

Good cause exists (other than one of the grounds listed above) for not proceeding as an expedited jury trial (§ 630.20(b)(9)) (explain below or on attached page or pages):

3. If the request is not made within the time required under Cal. Rules of Court, rule 3.1546, describe the good cause for late filing:

Check here if you need more space to describe the good cause for the request, or for delay, and attach a separate page or pages describing it. At the top of each page, write "EJT-003, item 2b" or "EJT-003, item 3," as applicable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

—INSTRUCTIONS—

1. This form is to be used by any party in a limited civil action seeking to opt out of the mandatory expedited jury trial procedures set out in Code of Civil Procedure sections 630.20–630.29. Those procedures are also described in the *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).
2. The law provides that mandatory expedited jury trial procedures apply to all limited civil cases (except for unlawful detainer or eviction cases), unless the case meets one of the criteria set out in Code of Civil Procedure section 630.20(b). Those are listed on the front of this form, at items 2a–2i. If a case fits into one of those criteria, either party may ask to opt out of the mandatory expedited jury trial procedures.
3. **If you want to opt out:** If you believe the case meets one of the criteria listed in item 2 and you want to opt out of the expedited jury trial procedures, fill out this form, serve a copy on all other parties in the case, and file the original with the court along with a proof of service (you can use form POS-040 for this). The form should be served and filed at least 45 days before the date first set for trial. If you have good cause for filing it later, explain that in item 3.
4. **Documentation not required:** It is not necessary to submit documentary evidence with this application, which is based on statements being made under penalty of perjury. You may submit such evidence if you believe it to be necessary or appropriate.
5. **If you receive a copy of this form:** If you disagree that the the case meets any of the criteria listed in item 2, you can object. To do that, fill out the *Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures* (form EJT-004), serve a copy on all other parties in the case, and file the original with the court along with a proof of service (you can use form POS-040 for this). *You must file the objection within 15 days of the date the request was served on you.*
6. **Court action:** After the court has reviewed the request and any objection that has been filed within 15 days, the court will issue an order that will do one of the following:
 - a. grant the request,
 - b. deny the request, or
 - c. set a hearing to hear further from the parties.
7. **Criteria For Opt-Out No Longer Applicable:** Parties should be aware that they are to promptly inform the court if the ground or grounds which supported the opt out of this case from Mandatory EJT are no longer applicable, and the court may require the case be tried as an expedited jury trial.

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT 03/10/16 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
OBJECTION TO REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PROCEDURES	CASE NUMBER: _____

1. (Name of party): _____ objects to the request to opt out of mandatory expedited jury trial procedures.
2. The request to opt out was filed by (name of applicant): _____ and was served on (date): _____
3. The ground for objection is (check one or both of the following grounds):
 - a. The case does not meet the criteria that the applicant has identified in the *Request to Opt Out* (identify each ground that was checked in item 2 of the Request, and explain below or on attached page why it does not apply to this case):

b. The request to opt out is not timely under Cal. Rules of Court, rule 3.1546, and there is no good cause for a late request. (Explain below or on attached page or pages.)


4. If the objection is not made within the time required under Cal. Rules of Court, rule 3.1546, describe the good cause for late filing:

Check here if you need more space and attach a separate page or pages. At the top of each page, write "EJT-004, item 3a," "EJT-004, item 3b," or "EJT-004, item 4," as applicable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)



 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i> DRAFT 03/10/16 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: _____	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER: _____	
ORDER ON REQUEST TO OPT OUT OF MANDATORY EXPEDITED JURY TRIAL PRODCEDURES	CASE NUMBER: _____

The court has reviewed the request to opt out, along with any objection thereto, and makes the following orders:

- The court **grants** the request. The case will *not* proceed under the mandatory expedited jury procedures.
- The court **denies** the request to opt out for the following reason(s):

- The court needs more information to decide whether to grant the request. A hearing is set on the date below:

Name and address of court if different from above:

Hearing Date	Date: _____ Time: _____
	Dept.: _____ Room: _____



Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

Date: _____
JUDICIAL OFFICER

Clerk's Certificate of Service

I certify that I am not a party to this action and (check one):

- A certificate of mailing is attached.
- I handed a copy of this order to the applicant listed above, at the court, on the date below.
- This order was mailed first class, postage paid, to the applicant at the address listed above, from (city): _____, California on the date below.

Date: _____ By: _____
DEPUTY CLERK

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	<i>FOR COURT USE ONLY</i> DRAFT 03/10/16 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER:	
AGREEMENT OF PARTIES (MANDATORY EXPEDITED JURY TRIAL PROCEDURES)	CASE NUMBER: _____

Under Code of Civil Procedure section 630.23(d), parties are encouraged to agree to modifications or limitations on pretrial procedures and presentation of information at trial that could streamline the case, including but not limited to those items described in form EJT-022A. This form along with form EJT-022A may be used to record any such agreements.

EACH PARTY AGREES AS FOLLOWS:

1. The parties to the action are:
 - a. Plaintiff (name):
 - b. Defendant (name):
 - c. Other party (name and party):
2. The parties have agreed: as described in attached form EJT-022A. as described below.

Date: _____

 (TYPE OR PRINT NAME AND TITLE, IF ANY)

▲ _____
 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Date: _____

 (TYPE OR PRINT NAME AND TITLE, IF ANY)

▲ _____
 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Date: _____

 (TYPE OR PRINT NAME AND TITLE, IF ANY)

▲ _____
 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

- It is so **ORDERED**.
- The order confirming the proposed agreement is **DENIED** for good cause.

Date: _____

 JUDICIAL OFFICER

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT 03/10/16</p> <p style="text-align: center;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
[PROPOSED] CONSENT ORDER FOR VOLUNTARY EXPEDITED JURY TRIAL	CASE NUMBER:
This form is to be signed by all parties and their attorneys of record consenting to a voluntary expedited jury trial under California Code of Civil Procedure sections 630.01–630.12 and rules 3.1545–3.1553 of the California Rules of Court. Before completing this form, all parties should review <i>Expedited Jury Trial Information Sheet</i> (form EJT-001-INFO).	

EACH PARTY AGREES AS FOLLOWS:

1. The parties to the action, each of whom has the authority to consent to an expedited jury trial (EJT), are:
 - a. Plaintiff (*name*):
 - b. Defendant (*name*):
 - c. Other party (*name and party*):
2.
 - a. Plaintiff is represented by an attorney who has advised plaintiff about the EJT procedures and provided plaintiff with an *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).
 - b. Defendant is represented by an attorney who has advised defendant about the EJT procedures and provided defendant with an *Expedited Jury Trial Information Sheet* (form EJT-001-INFO).
 - c. I (*name*): _____ am representing myself and understand the voluntary expedited jury trial procedures as set forth in Code of Civil Procedure sections 630.01–630.12 and rules 3.1545–3.1553 of the California Rules of Court.
 - d. Insurance carriers responsible for providing coverage or defense for the following parties have been informed of the EJT procedures and provided with an *Expedited Jury Trial Information Sheet* (form EJT-010) and do not object to the procedures:
 - (1) Insurance carrier (*name of carrier*): _____
for (*name of party*): _____
 - (2) Insurance carrier (*name of carrier*): _____
for (*name of party*): _____
 - (3) Additional insurance carriers and parties are listed on attached form MC-025.
3. A party to this action is is not a minor, an incompetent person, or a person for whom a conservator has been appointed.
4. Each party understands and agrees to the voluntary expedited jury trial procedures, as follows:
 - a. That all parties **waive all rights to appeal**, to move for directed verdict, or to make any posttrial motions, except as provided in Code of Civil Procedure sections 630.08 and 630.09;
 - b. That each side will have up to **five hours** in which to complete jury voir dire and present its case;
 - c. That the jury will be composed of **eight or fewer jurors** with no alternates;
 - d. That each side will be **limited to three peremptory challenges**, unless the court permits an additional challenge in cases with more than two sides as provided in Code of Civil Procedure section 630.04; and
 - e. That the trial and pretrial matters will proceed under a–d above and, unless the parties expressly agree otherwise in this agreement or the attachment to it, under all other provisions for voluntary expedited jury trials (Code Civ. Proc., § 630.01 et seq.) and the rules of court for voluntary expedited jury trials (Cal. Rules of Court, rules 3.1545–3.1553).

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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5. Each party understands that only three-quarters of the jury need to agree in order to reach a decision, unless otherwise agreed by the parties.
6. Each party understands that the parties may make additional agreements concerning the trial in terms of applicable rules, number of witnesses, types of evidence, or other matters in order to shorten the length of time in which the matter will be tried to the jury. Any such agreements are described in item 9 below or in *Attachment to [Proposed] Consent Order for Voluntary Expedited Jury Trial* (form EJT-022A).
7. Each party understands that the parties may enter a confidential high-low agreement specifying a minimum amount of damages that a plaintiff is guaranteed to receive from defendant and a maximum amount that defendant will be liable for, regardless of the verdict returned by the jury.
8. Each party understands that any award of attorney's fees and costs will be decided by the court.
9. Other agreements are described in attached form EJT-022A are as follows:

10. Total number of pages attached: _____ The consents below apply to all the agreements described in those pages.

After reading the above and any attachments, I hereby consent to the voluntary expedited jury trial procedures for this case as stated in these documents.

PARTIES

Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	_____ (SIGNATURE OF PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	_____ (SIGNATURE OF DEFENDANT)
Date: _____ (TYPE OR PRINT NAME AND TITLE, IF ANY)	_____ (SIGNATURE OF <i>(describe party)</i>):

ATTORNEYS

Date: _____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF ATTORNEY FOR <i>(describe party)</i>):

- It is so **ORDERED**.
 The proposed consent order is **DENIED** for good cause.

Date: _____

 JUDICIAL OFFICER

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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ATTACHMENT TO

- [PROPOSED] CONSENT ORDER FOR VOLUNTARY EXPEDITED JURY TRIAL
- AGREEMENT OF PARTIES (MANDATORY EXPEDITED JURY TRIAL PROCEDURES)

(This attachment may be used with form EJT-018 OR EJT-020)

The parties have agreed to the following (check all items on which agreements have been reached and describe the agreements in detail. If more space is needed for any item, use form MC-025 and complete item 15 below):

1. (For voluntary expedited jury trial cases only) Modifications of the timeline for, or other aspects of, the pretrial submissions required by rule 3.1548 of the California Rules of Court (describe timeline or other changes):

2. Limitations on the number of witnesses per party, including expert witnesses (describe):

3. Modifications of statutory or rule provisions regarding exchange of expert witness information and presentation of testimony by such witnesses (describe):

4. Allocation of time periods stated in rule 3.1550 of the California Rules of Court, including how arguments and cross-examination may be used by each party in the five-hour time frame (describe):

5. Agreement as to any evidentiary matters, including any stipulations or admissions regarding factual matters (state such matters in detail):

6. Agreement about what constitutes necessary or relevant evidence for a particular factual determination (describe):

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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7. Agreement about admissibility of particular exhibits or demonstrative evidence presented without the legally required authentication or foundation (*describe*):
8. Agreement about admissibility of video or written depositions and declarations (*describe*):
9. Agreement about any other evidentiary issues or the application of any of the rules of evidence (*describe*):
10. Agreement to use photographs, diagrams, slides, electronic presentations, overhead projections, notebooks of exhibits, or other methods for presenting information to the jury (*describe*):
11. Agreement concerning the time frame for filing and serving motions in limine (*describe*):
12. Agreement that fewer than eight jurors may hear this case (*describe*):
13. Agreement concerning the number of jurors required to reach a verdict in this case (*describe, including any agreement regarding loss of juror after trial starts*):
14. Other agreements (*describe*):
15. Form MC-025 is attached, with further details concerning items (*list items*):

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Defense Counsel by Michael Belote	AM	<p>With very minor suggestions for amendments, the California Defense Counsel agrees with the proposed rules and thanks the Judicial Council for the prompt and thorough work in this area.</p> <p>Our comments focus on the four questions propounded on page 7 of the Request for Comments.</p> <p>1. On balance, the proposed rules appropriately address the stated purposes of the statute relating to mandatory expedited jury trials. In particular, the rules provide simple, easy to understand provisions for requesting expedited jury trials, opting out of "EJT" treatment, objecting to requests to opt-out, etc. The simple approach embodied in the proposed rules benefits litigants, lawyers, and the courts. For example, we believe that the rules appropriately relieve lawyers of any responsibility to provide documentation to the court in support of a request to opt-out, because the lawyer is declaring under penalty of perjury that a ground to opt out exists. It is only when there is an objection to a request to opt out that lawyers should be required to submit any documentation in support of the opt-out request. At that point, the court should schedule a hearing and require the parties to submit evidence in support of the opt-out request or objection. For clarity, we suggest that the instructions for Form EJT-003 should contain language informing parties that</p>	<p>The committee notes the general agreement with the proposal.</p> <p>1. The committee agrees that the procedure should be a simple one, particularly when the opt-out request is based on a ground on which a party has the right to opt out, with no finding required by the court.</p> <p>The committee agrees with this suggestion and has added a new instruction to form EJT-003 to</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>no documentary evidence need be submitted in connection with an opt-out request.</p> <p>2. With respect to deadlines to opt out of expedited jury trial provisions, we generally believe that requests to opt out should be submitted as early as possible in the litigation. We are concerned about timelines for opting out and objecting to opt-outs for cases filed prior to July 1, 2016. The proposed rules presently provide that parties seeking to opt out of cases filed before July 1, 2016 file and serve the request at least 10 days before trial, with a party opposing the request required to serve the opposition within 15 days after the request to opt out. This will be difficult for requests to opt out submitted very close to trial dates. We suggest that for pre-July cases, requests to opt out be required at least 30 days before trial dates, providing time for any objections to be filed well in advance of trial dates. Some cases set for trial very shortly after the July 1 effective date of the law are simply going to require some special handling by courts. The 45-day timeframe for opting out of EJT provisions for cases filed after July 1, 2016 is appropriate.</p> <p>3. With respect to the question concerning cases where grounds for opting out no longer exist, we believe that the rules should address this situation. The rules should provide that cases should be returned to mandatory EJT when the</p>	<p>reflect this.</p> <p>2. The committee understands the concerns about the short amount of notice proposed for opt outs in cases filed before July 1, 2016, and had modified the rule to require that requests for opt outs in those cases, as in the later-filed cases, be filed 45 days before the next date set for trial. Objections are to be filed within 15 days after service of the request. Exceptions to those deadlines are permitted for good cause, in order, among other things, to allow courts to specially handle any cases set for trial shortly after the law goes into operation.</p> <p>3. The committee has considered this comment and has modified the rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>opt-out grounds no longer exist. We suspect in some cases that parties who opt out may not inform opposing counsel when the grounds for opting out no longer exist, so perhaps a mechanism needs to be created where the party who opts out affirms that the basis for the opt-out still exists. If cases are going to be returned to EJT status, this should be done early enough in the case so that parties have time to reach agreement on items contained in EJT Form 022A.</p> <p>4. We agree with the provisions relating to the existing voluntary EJT program.</p> <p>Thank you for the opportunity to comment on the proposed EJT rules.</p>	<p>promptly inform the court, and the court will have the discretion to have the case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be handled by courts on an individual basis based on the facts and timing involved, and so has not set any mandatory time frames for the court.</p> <p>4. The committee notes the agreement with current rules regarding voluntary EJTs’</p>
2.	Consumer Attorneys of California by Saveena K. Takhar, Associate Staff Counsel	AM	<p>I write on behalf of the Consumer Attorneys of California to comment on the Civil and Small Claims Advisory Committee’s proposed form EJT-003 for Expedited Jury Trials. We are concerned about the proposed format of the Request to Opt Out of Mandatory Expedited Jury Trial Procedures form.</p> <p>Problem Language:</p> <p>Opt out (i), CCP § 630.20(b)(9), “other good cause for not proceeding as an expedited jury trial” should be designated as distinct and</p>	<p>The committee notes the commenter’s general agreement with the proposal, and its requested modification of form EJT-003. The committee has modified that form in light of the commenter’s suggestion, dividing item 2 on the form into two sections as suggested.</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>separate from the other opt out exceptions because “good cause” must be proven to the judge while the other opt outs are objective and thus automatic.</p> <p>Our Position: In general, we support the proposed rules, standards, and forms for both Mandatory and Voluntary Expedited Jury Trials. However, with regards to proposed form EJT-003, CAOC believes the good cause opt out should be distinguished from the other automatic opt outs.</p> <p>Opt outs established by CCP § 630.20 subdivisions (b)(1) through (b)(8) are all objectively established due to their nature. For example, either a case involves a claim of intentional conduct or it does not. Thus, a party can merely check a box to allege one of these automatic opt outs.</p> <p>The final opt out is a “good cause” catch all, and is intended for cases where parties require more than five hours to present or defend their action and the parties are unable to stipulate to more time or some other scenario to be argued to the judge as to why the case should not proceed as an Expedited Jury Trial. Thus, while the first eight opt outs will be automatic, the good cause opt out must be proven to the judge. Due to the difference between the automatic opt</p>	

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>outs and the good cause opt out, CAOC recommends that on form EJT-003 opt out “i” be placed under a separate subheading. This subheading would provide clarity regarding the different procedure entailed for the good cause opt out and ensure that a party must both allege why their case should not proceed as an EJT and obtain approval from the court.</p> <p>Thank you for your attention to this matter.</p>	
3.	Orange County Bar Association by Todd G. Friedland, President	AM	<p>Form EJT-003 should be modified to inform the attorney/party that if one of the criteria relied upon initially to opt out of Mandatory EJT under C.C.P. section 630.20(b) is no longer applicable at the time of trial, then the court may require the case to proceed as an expedited jury trial (EJT). This would be a more transparent means of informing the parties they may still be subject to an EJT, even if there was an initial, valid reason to opt out. [Even if a rule is not developed to clarify that a case can be returned to mandatory EJT status when appropriate, even after an opt-out has been approved by the Court, it seems, in the absence of a rule specifying one way or the other as to whether the case can be returned to mandatory EJT status, there is the specter of a court concluding that the case should be returned to mandatory EJT status, perhaps by the court exercising its authority or purported authority</p>	<p>The committee notes the commenter’s general agreement with the proposal, and its requested modification of form EJT-003. The committee has modified that form in light of the commenter’s suggestion, adding a new paragraph to the instructions.</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
			<p>under laws generally allowing it to manage its proceedings in the absence of laws or rules indicating to the contrary (e.g., <i>Code of Civil Procedure</i> 187 (“if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code”).</p> <p>In order to carry out this goal of being transparent about the possibility of an opt-out reason vanishing and the matter thereby being required to proceed as an EJT, a suggestion is to add to “Instructions” on p. 2 of EJT-003 (the Request to Opt-out) a number 6:</p> <p>6. Criteria For Opt Out No Longer Applicable at Time of Trial. Parties and counsel should be aware that if the criteria which supported the opt out of this case from Mandatory EJT is no longer applicable at the time of trial, the Court may require the case be tried as an expedited jury trial.</p> <p>However, as explained below, if there is going to be specific reference in the forms or rules to this possibility of the court returning the matter to mandatory EJT status, there should be a Rule or provisions added to the existing Rules as to</p>	

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
			<p>the procedures involved in returning the matter to mandatory EJT status (e.g., at least a 20 or 30 day continuance of trial after the parties are notified of the return to EJT status, so that counsel may adequately prepare for what is a different type of trial – to wit, one with 8 instead of 12 jurors and an abbreviated time period in which to present the case).</p> <p><u>REQUEST FOR SPECIFIC COMMENTS</u></p> <p><i>1. Does the proposal appropriately address the stated purpose?</i> In part. The stated purpose of the proposal (W 16-02) seems to be to develop procedures for opting out, along with other rules and forms appropriate for mandatory EJTs. While much headway is made via the forms and rules proposed, there is more to be done (as explained further here). Specifically, we consider it important to have rules that promote certainty for the litigants with sufficient time to allow them to prepare for an EJT versus a “full” jury trial. We believe there is different preparation and different strategizing involved for an EJT versus a “full” jury trial and it burdens, possibly prejudices, parties and their counsel to prepare for one versus the other (or, worse, to have to change on very short notice from one to the other). As such, we suggest a specific period be specified in the rules (of at least 20, possibly 30, days before trial) in which the parties should be notified of a change (or</p>	<p>1. The committee has considered the commenter’s concerns, and the suggestion that the rule mandate that the court provide 20 or 30 days’ notice to the parties before returning a case that has been opted out of mandatory expedited jury trial procedures back to those procedures should the grounds for opting out no longer apply. The committee disagrees that such a specific rule is needed in light of the different circumstances that might apply, and believe the timing of the trial date is best left in the discretion of the court. The committee notes that it has modified the proposed rule to mandate that the parties must inform the court of any such change promptly, which may alleviate some of the commenter’s concerns about late notice of a return to the expedited jury trial procedures.</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>return) to EJT after an initial opt out was granted (i.e., if the notice of a return to mandatory EJT is given on the day of trial, the trial should be continued for at least 20 or 30 days).</p> <p>Also, consideration should be given to adding a requirement as to how soon the Court must issue its Order on a Request to Opt Out (proposed form EJT-003). Since the request is to filed and served at least 45 days before trial (in the absence of good cause for a shorter time period), it might make sense to require that the Court issue its Order on Request to Opt Out (proposed EJT-005) at least 20 days before trial (thus giving enough time for any Objection to the opt out to be filed and considered, while allowing some period of time before trial for the parties to know whether they are going through an EJT or non-EJT).</p> <p>We acknowledge the suggestion in the proposal that the only impact of a non-EJT case versus EJT is that it will “use more jurors” and take “somewhat longer” than the two to three days an EJT will take, but we feel that it’s a substantially different enough experience and, in some cases, the difference may be more than taking the case just “somewhat longer” to try, justifying significant notice to the parties of what kind of jury trial they will be participating in.</p>	<p>The committee considered this suggestion that the rules mandate how fast a court must act on a request to opt out of the expedited jury trial procedures, but declined to recommend such a rule, at least at this time. Most of the criteria for opting out are objective factors, the existence of which mandate under the statute that a party may opt out of the mandatory expedited jury procedures. (See Code Civ. Proc. § 630.20(b)(1)-(8). Therefore once a party is served with the request, the party will generally know whether the opt out will be granted.</p> <p>In addition, there is no reason to believe that courts will delay action on any of these requests. Should that occur and this delay become a problem, the committee will revisit whether further rules should be recommended on this point.</p>

W16-02

Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p><i>2. Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case?</i> Proposed rule 3.1546(c) requires that parties seeking to opt out after July 1, 2016 file and serve a “Request to Opt Out of Mandatory Expedited Jury Trial Procedures” “at least 45 days before the date first set for trial” and for “cases filed before July 1, 2016 at least 10 days before trial.”</p> <p>Any objection to a party’s opt out, must be filed and served within 15 days after service of the request.</p> <p>The deadline to opt out appears to be adequate provided that the Court can quickly rule on the opt out request and any objection without a hearing. The proposal states that hearings will not normally be required and opt-outs will be “routinely granted.” Cal. Civil Code section 96 sets forth the timeline for serving the request for witnesses and description of evidence intended to be used at trial in a limited civil case and it seems that the parties could make a well-informed decision regarding the appropriateness of EJT during the preparation of this information demand/exchange. Cal. Civil Code section 96’s request for witnesses and the description of evidence is required to be served</p>	<p>The committee agrees that the 45-day deadline to opt out is adequate. In addition, as noted above, most of the criteria for opting out are objective factors, the existence of which mandate under the statute that a party may opt out of the mandatory expedited jury procedures. (See Code Civ. Proc. § 630.20(b)(1)-(8). Therefore once a party is served with the request, the party will generally know whether the opt out will be granted.</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>“no more than 45 days and no less than 30 days prior to the date first set for trial”.</p> <p>The timing for opting out appears appropriate if the opt-outs are routinely granted as the proposal intends.</p> <p>At the same time, if the goal were to provide the parties with at least 20 (or 30) days’ notice prior to trial of whether the trial will be EJT or non-EJT, expansion of the time periods may be prudent (e.g., Opt out at least 60 days before trial rather than 45; any Objection filed at least 45 days before; Court rules at least 30 days before...thus giving that 30 days notice of what kind of trial it will be and, if it turns out that the opt-out reason disappears and there is to be a return to EJT, then at least a 30-day continuance after the change; or, by way of alternative example, Opt out by no later than 45th day before trial, Object by 30th day, Court required to rule by 20th day).</p> <p><i>3. Should there be a rule to clarify that courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in CCP section 630.20(b) if that ground is no longer applicable at the time of trial?</i> Yes and, also, language should be added to the Form EJT-003. Because this is a new Mandatory procedure for limited cases and return to EJT status can be a</p>	<p>The committee considered the suggestion that the rules mandate how fast a court must act on a request to opt out of the expedited jury trial procedures, but declined to recommend such a rule, at least at this time. There is no reason to believe that courts will delay action on any of these requests. Should that occur and this delay become a problem, the committee will revisit whether further rules should be recommended on this point.</p> <p>The committee agrees and has modified the rules to include a provision that a case may be returned to mandatory expedited jury procedures should criteria for the opt out no longer apply. Form</p>

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Civil Procedure: Expedited Jury Trials (Adopt new rule 3.1546, amend rules 3.1545, and 3.1547–3.1552, and renumber rule 3.1553; adopt new forms EJT-003 and EJT- 004; approve new forms EJT-005, and EJT- 018; revise and renumber forms EJT-001-INFO and EJT-022A; and revise form EJT-020)

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	Commentator	Position	Comment	Committee Response
			<p>significant departure from non-EJT status, this clarification is important for both attorneys and their clients. This reminder/clarification can be <i>easily added</i> onto the form requesting opt out so that attorneys will be able to advise their clients and understand what happens if the ground for opt out is no longer applicable <i>at the time of trial</i>.</p> <p>Suggestion is to add to Instructions on page 2 of EJT-003 number 6:</p> <p>“6. Criteria For Opt Out No Longer Applicable at Time of Trial. Parties and counsel should be aware that if the criteria which supported the opt out of this case from Mandatory EJT is no longer applicable at the time of trial, the Court may require the case be tried as an expedited jury trial.”</p> <p>A new rule (as opposed to the above-proposed addition to form EJT-003) should specify the procedures to be followed upon the Court returning a matter to mandatory EJT status (e.g., at least 20 days notice to parties of returning matter to mandatory EJT status and if trial is within 20 days, then trial has to be continued so there is at least a 20 day period between notice and trial date; alternatively, 30 days could be the required period and, whether it is 20 or 30 days, the important part is that there be some</p>	<p>EJT-003 has also been modified in light of this comment.</p> <p>The committee has considered this comment, but disagrees that the proposed timelines be embedded in the rules. The committee has modified the proposed rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must promptly inform the court, and the court will have the discretion to have such a case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be</p>

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			<p>substantial period of time for the parties and attorneys to re-group after the matter is ordered to be returned to mandatory EJT status).</p> <p>There is concern that a party can readily eliminate an opt out ground (e.g., remove a claim for punitive damages) on the day of trial and claim “ready for a Mandatory EJT”, to the prejudice of the opposing part which was otherwise prepared for a full trial. It seems best to have it written into the rules what the effect of returning to EJT should be (e.g., assurance of at least a 20 or 30 day period of time in which to prepare for what would then be known to be an EJT).</p> <p>4. Are the current pre-trial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the timeframes be changed? Should other aspects of the rules be changed? The rules do not appear to be overly burdensome. First, the parties may agree upon other pre-trial arrangements (other than those described in rule 3.1548). Second, even if the parties did not reach agreement on any modified pre-trial plan, the timeframes seem appropriate to ensure the parties are ready to go to trial on the trial date:</p> <ul style="list-style-type: none"> - 25 days to exchange information including lists of witnesses, copies of documents and depositions; - 20 days to exchange additional 	<p>handled by courts on an individual basis, based on the facts and timing involved, and so has not set any mandatory time frames for the court.</p> <p>The committee notes that the commentator does not see any need for change to current voluntary EJT rules.</p>

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			<p>information – docs and witnesses in light of first exchange of information; and</p> <ul style="list-style-type: none"> - 15 days for the court to hold a pre-trial conference. 	
4.	State Bar of California, Committee on Administration of Justice San Francisco, CA	A	<p>1. <i>Does the proposal appropriately address the stated purpose?</i> Yes. CAJ believes the proposal appropriately addresses the purpose in amending and adopting rules and forms on both mandatory and voluntary EJTs.</p> <p>2. <i>Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case?</i> CAJ believes there is some risk that allowing parties to exercise their right to opt out of an EJT as late as 45 days before the date first set for trial could result in gamesmanship between parties. In many cases, the ground for opting out should be evident from the outset of the case. If a party chooses not to opt out, there may be an assumption that the case will be tried as an EJT, and pre-trial preparation would proceed accordingly. It might then be unfair if, much later in the case and 45 days before trial, the case were to become a traditional jury trial. Accordingly, CAJ believes the deadline for requesting to opt out of an expedited jury trial should be earlier than 45 days before the date first set for trial.</p>	<p>1. The committee notes the commenter’s general agreement with the proposal.</p> <p>2. The committee has considered the commenter’s suggestion that the deadline for requesting opt-outs should be earlier in a case, but disagrees. While it is true that with an earlier deadlines, the parties would know from earlier in the case whether they were likely to be engaging in an EJT. The committee noted, however, that some of the criteria could change over the course of a case. Moreover, pretrial procedures in these limited civil actions will remain the same whether or not the eventual trial is an EJT. The primary impacts of opting out of the mandatory EJT procedures will be that the regular jury trial will use more jurors at trial and may take somewhat longer to try than the two to three days an EJT will take. In light of these considerations, the committee concluded there was not good reason to limit a party’s ability to opt out to early in the case.</p>

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			<p>3. <i>Should there be a rule to clarify that courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in Code of Civil Procedure section 630.20(b), if that ground is no longer applicable at the time of trial?</i> CAJ recommends that there be a rule to clarify that courts may require that a limited civil case be tried as an EJT even after an opt-out has been granted, if in fact at the time of trial, that ground is no longer applicable. Although the court generally retains their discretion to do this, CAJ believes there should be a rule to clarify this authority.</p> <p>4. <i>Are the current pretrial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the time frames be changed? Should other aspects of the rule be changed?</i> CAJ does not have a specific comment as to whether the current pretrial rules for voluntary EJTs are overly burdensome or whether other aspects of the rule should be changed. In general, however, because these pretrial rules are relevant only to voluntary EJTs, CAJ believes the rules provide ample opportunity for the parties to agree to make significant adjustments under the voluntary EJT process.</p>	<p>3. The committee agrees and the rules have been modified to include such a provision.</p> <p>4. The committee notes the commenter’s position that the current voluntary EJT rules are workable as they stand.</p>

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5.	State Bar of California, Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Chair San Francisco, CA	AM	<p>a. We believe the pretrial exchange and pretrial conference for voluntary EJT’s are beneficial and are not overly burdensome, particularly when the parties can stipulate to change the requirements and the timing. We would not change the current rules regarding these requirements other than as recommended in the proposal.</p> <p>b. We consider the current 45-day deadline to opt out of mandatory EJT appropriate, and we would not favor an earlier deadline. An earlier deadline would force parties to opt out sooner when some parties that could opt out, if allowed more time to consider the benefits of EJT and decide that the case is suitable for EJT, might decide not to opt out.</p> <p>c. We believe the rules should state explicitly that the court may order a mandatory EJT if the grounds for opting out no longer apply. We suggest that the advisory committee consider including in the rules either a deadline for ordering a mandatory EJT or language stating that the length of time before the trial date is a factor for the court to consider.</p>	<p>a. The committee notes the commenter’s position that the current voluntary EJT rules are workable as they stand.</p> <p>b. The committee agrees.</p> <p>c. The committee has considered this comment, and agrees with some of it. The committee has modified the proposed rules to require that if the grounds on which a party or parties have opted out of mandatory expedited jury trial procedures no longer apply to a case, the parties must promptly inform the court, and the court will have the discretion to have such a case tried as a mandatory expedited jury trial. The committee has concluded that such cases will need to be handled by courts on an individual basis, based on the facts and timing involved, and so has not set any mandatory time frames for the court.</p>

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			<p>d. We suggest inserting a comma after “starting at rule 3.720” in rule 3.1546(b) and inserting “the” before “date of service” in rule 3.1546(c)(3). Although it is beyond the scope of this proposal, we suggest informing the Legislature that the reference in Code of Civil Procedure section 630.02, subdivision (a) to section 630.03, subdivision (e)(1)(E) should be to subdivision (e)(2)(E).</p> <p>e. EJT-001-INFO: In item 2, second bullet point, line 4, the word “trial” should be italicized. In item 6, we would modify the penultimate sentence as follows because the parties ordinarily should present stipulated facts to the jury, but the jury need not decide those facts:</p> <p>“These agreements may include what rules will apply to the case, how many witnesses can testify for each side, what kind of evidence may be used, and what facts the parties already agree to and so do not need to take to the jury to <u>decide.</u>”</p> <p>We note that there is no item 7, so items 8 through 11 should be renumbered, and references in item 2 to items 8 and 10 should be revised. In item 8, second bullet point, we would modify the first sentence as follows to conform to the statute:</p>	<p>d. The grammatical changes have been made to the rule. Neither this committee nor the council has the authority to make changes to current statutes.</p> <p>3. The committee appreciates these comments and has modified the form to in light of them.</p>

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			<p>“Any party may ask to opt out of the procedures if the case meets <u>any of</u> the criteria set out in Code of Civil Procedure section 630.20(b).”</p> <p>f. EJT-003: In the instructions on page 2, item 4, final sentence, we would change “opposition” to “objection” to be consistent with references elsewhere in the rules and forms to an “objection” (i.e., “Objection to Request to Opt Out of Mandatory Expedited Jury Trial Procedures”), not an “opposition.”</p> <p>g. EJT-004: This form includes items 1, 3, 3, and 4. We suggest renumbering the first item 3 as item 2. The last two items (3 and 4) are alternative grounds for objection. The objecting party should select one or both of these grounds. We suggest combining the two grounds in a new item 3 stating:</p> <p>“The ground for objection is (<i>check one or both of the following grounds</i>):”</p> <p>The two alternative grounds would follow, labeled a and b, each with a box beside it as in EJT-003, item 2. The final sentence before the declaration then should be revised to refer to items 3a and 3b.</p>	<p>f. The form has been modified in light of this suggestion.</p> <p>g. The form has been modified in light of this suggestion.</p>

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6.	Superior Court of Los Angeles County	A	We agree with the proposed changes and in particular agree that the opt-out deadline of Rule 3.1546(c)(2) should remain 45 days, which is consistent with the deadline for document exchange as provided in CCP Sections 90 et seq. An earlier deadline might discourage maintaining the status of the case as subject to mandatory EJT in light of the fact that there is no provision for “opting in” after an opt-out notice is filed.	The committee notes the commenter’s agreement with the proposal generally, and with the proposed timeline for opting out.
7.	Superior Court of Orange County by Civil Operations Managers	AM	<p>On proposed form EJT-018, it states ‘The proposed consent order is DENIED for good cause.’ It appears that it should state ‘The proposed agreement of parties is DENIED for good cause.’ Otherwise, agree with proposal.</p> <p>In reference to page 3 of the proposal, the below phrase(s) and proposed Rule 3.1546(c)(2) and Rule 3.1546(c)(3): "• For cases already on file at the time the rule (and the new law) becomes operative, and so potentially closer to or past the date first set for trial, parties must file any opt out request at least 10 days before trial. • Any objection to the request must be served and filed within 15 days after service of the request, using a mandatory form. (See proposed form EJT-004.)"</p> <p>The way the above is written (and the proposed Rule 3.1546(c)(2) and Rule 3.1546(c)(3)), there</p>	<p>The form has been modified in light of this suggestion.</p> <p>The committee has modified the rules to eliminate this inconsistency. Parties in cases filed both before and after the July 1 operative date now have similar deadlines.</p>

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			is only 10 days to opt out of the EJT for cases filed before July 1, 2016 and yet there is a 15 day time limit to file an objection to the opt out). Either make an earlier deadline for the opt out period for existing cases/cases filed before July 1, 2016 or make mandatory EJTs for new cases only.	
8.	Superior Court of Riverside County	A	Bill notates limited civil frequently. Will this pertain to limited civil only?	<p>The committee notes the commenter’s general agreement with the proposal.</p> <p>The amended rules are intended to implement the provisions of AB 555, which provides that mandatory EJTs are to be held in limited civil cases except where certain exceptions apply. However, voluntary EJTs are not restricted to limited civil cases, and can be used in any civil cases in which the parties consent to the process.</p>
9.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	AM	<p>In answer to the request for specific responses, our court provides the following:</p> <p><i>Q: Would the proposal provide cost savings?</i> Unknown.</p> <p><i>Q: What are implementations requirements for courts?</i> Develop operational procedures, train staff, and add filings and hearing types to the civil case management system.</p> <p><i>Q: Would two months from JC approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, that should be enough time to implement.</p>	The committee notes the general agreement with the proposal, if modified as noted below, and appreciates the court’s response to the questions regarding impact and cost to the courts.

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			<p><i>Q: How well would this proposal work in courts of different sizes? Greater impact on larger courts based on number of staff and filings.</i></p> <p><i>Q: Is the notice provided in plain language such that it will be accessible to a broad range of litigants, including SRLs? Yes.</i></p> <p><i>Q: Does the proposal appropriately address the stated purpose? Yes.</i></p> <p><i>Q: Is the deadline for requesting to opt out of an expedited jury trial provided in proposed rule 3.1546(c) appropriate, or should the rule provide for a deadline significantly earlier in the case? No, the time to object appears appropriate so long as it is brought to the attention of the court that will be handling the trial.</i></p> <p><i>Q: Should there be a rule to clarify that the courts may require that a limited civil case be tried as an expedited jury trial even after an opt-out has been granted on a ground provided in CCP 630.20(b), if that ground is no longer applicable at the time of trial? Yes.</i></p> <p><i>Q: Are the current pretrial rules for voluntary expedited jury trials in rule 3.1548 overly burdensome? Should the time frames be changed? Should other aspects of the rule be changed? No comment.</i></p> <p>JC Form #EJT-003:</p>	<p>The committee notes the commenter’s agreement with the recommended deadline for filing opt outs. The committee notes that the deadline will be set out in the California Rules of Court, and the form request to opt out will be filed with the court.</p> <p>The committee agrees with the commenter’s recommendations for an additional rule to clarify courts may have case tried as an EJT if criteria for opt-out no longer applies, and had modified the proposed rule to reflect this.</p> <p>The form has been amended in light of this</p>

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			Item 1: the word “in” should be inserted between “set forth” and “Code of Civil Procedure...”	suggestion.
10.	TCPJAC/CEAC Joint Rules Subcommittee on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).	A	The Joint Rules Subcommittee agrees with the proposed changes and in particular agrees that the opt-out deadline of Rule 3.1546(c)(2) should remain 45 days, which is consistent with the deadline for document exchange as provided in CCP Sections 90 et seq. An earlier deadline might discourage maintaining the status of the case as subject to mandatory EJT in light of the fact that there is no provision for “opting in” after an opt-out notice is filed	The committee notes the commenter’s agreement with the proposal generally, and with the proposed timeline for opting out.