

How to Shorten Trials, a Reading List

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USE NOTES: These materials apply to bench trials and jury trials, and to nearly every field of law. For all California appellate cases cited in this List, visit <http://www.courts.ca.gov/opinions-slip.htm>, select link [Official Reports Opinions \(Searchable 1850-Present\)](#), and enter citation.

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http://www.americanbar.org/content/dam/aba/administrative/american_jury/2016_jury_principles.authcheckdam.pdf. See also, commentary on "Principle 12" (from 2005 version) at http://www.americanbar.org/content/dam/aba/administrative/american_jury/final_commentary_july_1205.authcheckdam.pdf, pp. 89/142 through 91/142.

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Brown, Hon. R.S., *Juxtaposed Expert Testimony: A Proposal to Benefit California's Judicial System* (2012), in *Verdict*, Vol. 2, 2012, pp.14-16, Sacramento, CA: Association of Southern California Defense Counsel. <http://www.ascdc.org/pdf/ascdc%2012-2.pdf>

California Codes, <http://leginfo.legislature.ca.gov/faces/codes.xhtml>

- *Code of Civil Procedure ("CCP")*:

- §§ 128 subd. (a) and 187 (judicial powers to control litigation processes).
- § 437c, (summary judgment of case and summary adjudication of claims or defenses).
- § 437c(t) (summary adjudication of non-dispositive but trial-shortening issue or claim).
- §§ 630.01-630.11 (voluntary expedited jury trials ("EJTs")).
- §§ 630.20-630.30 (mandatory EJTs in limited civil cases).

- *Evidence Code*,

- § 320 (duties of judges to regulate the order of proof).
- § 352 (discretion to exclude evidence based upon weighing listed factors).
- § 765 (duties of judges to control examination of witnesses).
- §§ 1520—1523 (secondary evidence rule; see also, Imwinkelried, et al., *infra* in this list).

- *Penal Code*, § 1044 (duties of judges in criminal trials, including expeditiousness).

- *Probate Code*:

- § 800 (in probate cases, court has full powers of superior court, including CCP § 128).
- § 1000 (civil rules of practice and CCP apply when Probate Code is silent).
- § 4520(b) (in power of attorney probate cases, court has full powers of superior court).
- § 17001 (in trust cases in probate, court has full powers of superior court).
- § 17206 (broad powers to handle petitions re internal affairs of a trust).

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California Crane School, Inc. v. National Com. for Certification of Crane Operators (2014) 226 Cal.App.4th 12, 17-22 (affirms pretrial order limiting length of a civil jury trial, and an in-trial order denying rebuttal opportunity as "late", consistent with pretrial order).

Civil Jury Project at NYU School of Law, *Fact Sheet: Back-to-Back Experts* (2016), at Project's web site <http://civiljuryproject.law.nyu.edu/>, select "Research", then "Trial Innovations," or <http://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh-2-Back-to-Back-Experts-Fact-Sheet-4.10.16.pdf>

Civil Jury Project at NYU School of Law, *Fact Sheet: Limiting Length of Trials* (2016), at Project's web site <http://civiljuryproject.law.nyu.edu/>, select "Research", then "Trial Innovations," or <http://civiljuryproject.law.nyu.edu/wp-content/uploads/2016/10/Exh.-2-Juror-Fact-Sheet-Time-Limits.pdf>

Clement v. Alegre (2009) 177 Cal.App.4th 1277, 1281-1291 (courts' expectations re effective meeting and conferring, in discovery; can easily apply as well to pretrial and trial conduct).

Diamond, S.S., *How Jurors Deal With Expert Testimony and How Judges Can Help* (2008), in *Journal of Law and Policy*, Vol. 16, Issue 1, Article 4, pp. 47-67, Brooklyn, NY: Brooklyn Law School. <http://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1164&context=jlj>

Edmond, G., *Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure* (2009) 72 *Law and Contemporary Problems* 159-190 (Winter 2009), Durham, NC: Duke University School of Law. (Critical evaluation of concurrent expert testimony.) <http://scholarship.law.duke.edu/lcp/vol72/iss1/9>

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Hannaford-Agor, P. and N.L. Waters, *Estimating the Cost of Civil Litigation* (2013), in *Caseload Highlights*, Vol. 20, No. 1, Jan. 2013, pp. 1-8. Williamsburg, VA: NCSC. http://www.courtstatistics.org/~media/Microsites/Files/CSP/DATA%20PDF/CSPH_online2.ashx. See related charts "Hours Expended by Attorneys, Paralegals and Expert Witnesses..." http://www.ncsc.org/~media/Microsites/Files/CSP/DATA%20PDF/csph_2013_tablesv1.ashx. NOTE: These web sites both download slowly.

Hannaford-Agor, P., *Measuring the Cost of Civil Litigation: Findings from a Survey of Trial Lawyers* (2013), in *ABOTA's Voir Dire*, Spring, 2013, pp. 22-28: Williamsburg, VA: NCSC. <http://www.ncsc.org/~media/Microsites/Files/Civil%20Justice/Measuring%20the%20cost%20of%20civil%20litigation.ashx>

Howe, W.J. III, and J.E. Hall, *Oregon's Informal Domestic Relations Trial [IDRT]: A New Tool to Efficiently and Fairly Manage Family Court Trials* (2017), in *Family Court Review*, Vol. 55, Issue 1, Jan. 2017, pp. 70-83, © John Wiley & Sons. <http://onlinelibrary.wiley.com/doi/10.1111/fcre.12263/full>, or for easier reading, <http://onlinelibrary.wiley.com/doi/10.1111/fcre.12263/epdf>. See also, IAALS discussion on IDRTs with many useful links including to Oregon courts, at <http://iaals.du.edu/blog/oregon-domestic-relations-trial-pilot-and-iaals-resource-center-model-discussed-family-court>

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In re Welding Fume Prods. Liab. Litig., No. 03-17000, slip op. at pp. 44-45 and fn.39 (N.D. Ohio Aug. 8, 2005) (Dkt. No. 1353). (Concurrent expert testimony applied by trial court in threshold hearing with opposing experts, per *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) 509 U.S. 579. https://www.gpo.gov/fdsys/pkg/USCOURTS-ohnd-1_03-cv-17000/pdf/USCOURTS-ohnd-1_03-cv-17000-0.pdf

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Kloczko, J., *Time Limits, Jury Sensitivity Discussed to Shorten Trials* (2016), in Daily Journal, Oct. 17, 2016 (Editorial ID: 951603), p. 1. <https://www.dailyjournal.com/articles/253904>; or, sign into account and search for the Editorial ID number only).

Lamb, P.J., *10 Things Judge Can Do to Help Business Litigation to Be More Efficient and Less Expensive* (2014), in ABA's Legal Rebels newsletter, April 24, 2014. Reproduced with permission in Conference of Chief Justices Library. <http://ccj.ncsc.org/Civil/Resources/Library.aspx>, find sub-title "Trial", select link [Ten Things Judges Can Do to Help Business Litigation Be More Efficient and Less Expensive \(2014\)](#); or, www.abajournal.com/legalrebels/article/10_things_judges_can_do_to_help_business_litigation/?utm_source=maestro&utm_medium=email&utm_campaign=daily_email.

Lemley, M.A., J. Kendall and C. Martin, *Rush to Judgment? Trial Length and Outcomes in Patent Cases* (2013), in AIPLA Quarterly Journal, Vol 41, No. 2, Spring, 2013, pp. 169-204, American Intellectual Property Law Association (AIPLA), Arlington, VA. (Study of 624 patent trials either by jury (466) or by court (158) concludes (p. 187) "... *trial length seems to have no effect on outcomes at all.* [Emphasis added.]") <http://ssrn.com/abstract=2217690>, or https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217690.

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