

EXPEDITED JURY TRIALS

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An "Expedited Jury Trial" is a jury trial conducted in an expedited or streamlined manner, which produces an appealable verdict more quickly than a regular trial. It is a form of "summary jury trial" which conforms in all respects with the N.J. Court Rules and the Rules of Evidence. It is conducted pursuant to a "Consent Order for Expedited Jury Trial", which is signed by counsel and the court. Expedited Jury Trials have been conducted in Monmouth County in automobile negligence and medical malpractice cases with great success.

Hon. Samuel G. DeSimone, Assignment Judge of Gloucester County, has developed a "Summary Jury Trial" in which a jury hears a summary of a complex civil case and makes an advisory "decision" which is used in settlement negotiations. Although based on this model, the "Expedited Jury Trial" is binding in that it results in a verdict on which judgment is entered. The judgment is appealable pursuant to *Rule 2:2-3(a)(1)*.

The Expedited Jury Trial is best suited for cases in which expert witnesses are unavailable; cases with limited potential value for which the cost of bringing experts to trial is not justified; cases involving "matters of principle" but little money which one or both parties insist be decided by a jury; and cases which litigants and attorneys would rather not spend a lot of time trying because of busy schedules or other commitments.

In an Expedited Jury Trial, only one or two witnesses testify live and the rest of the evidence, including expert reports and depositions, is presented to the jury by counsel. This form of trial is authorized, in my opinion, by the following Rules of Procedure and Evidence: (1) *Rule 1:1-2*, which permits relaxation of the rules and provides that the court rules "shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay;" (2) Evidence *Rule 102*, which provides that the Rules of Evidence "shall be construed to secure fairness in administration and elimination of unjustified expense and delay;" (3) Evidence *Rule 611*, which permits the court to exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to "make the interrogation and presentation effective for ascertainment of the truth" and to "avoid needless consumption of time."

The Expedited Jury Trial saves time and money for litigants, attorneys and the courts and facilitates the effective and efficient presentation of evidence to juries. By agreeing to the provisions and stipulations in the consent order, the attorneys agree on behalf of their clients to take advantage of many of the shortcuts authorized by the rules of procedure and evidence. For example, the parties stipulate, pursuant to *Rule 1:8-2(c)*, that the jury will consist of six persons with no alternates, with a verdict being rendered by five jurors agreeing if one juror is excused for any reason. Although regular *voir dire* is conducted, the jury selection process is expedited because the minimum number of jurors is being chosen and each party agrees to be limited to three peremptory challenges. Opening statements are limited to fifteen minutes and summations to thirty minutes. Counsel agree to submit Requests to Charge only on issues not covered by the Model Civil Jury Charges.

The major advantage of an Expedited Jury Trial is that it obviates the need to present live expert testimony. It also reduces the number of lay witnesses who need to testify. In fact, usually only the plaintiff and defendant give live testimony, although the parties can agree to one additional lay or expert witness per side. The witnesses are named in paragraph four of the consent order to avoid any surprise. After the live testimony, the attorneys present to the jury the expert reports, depositions, and other evidence. Counsel may read or show the evidence to the jury, summarize it or simply ask the jury to look at it during deliberations.

The key to a successful Expedited Jury Trial is the preliminary hearing, which occurs on the record pursuant to Evidence *Rule* 104. At the hearing, counsel mark for identification all of the times of evidence they intend to use. Uncontested exhibits are marked into evidence right away. Contested exhibits are reviewed by the court, which hears and decides all objections on an *in limine* basis. Exhibits which are admitted subject to the redaction of inadmissible material are marked after the redactions are completed. While it takes some time to go through the documents and make rulings, it is time well spent because no objections to the admissibility of the documents and exhibits are allowed after the trial begins. As a result, the trial moves very smoothly and quickly.

Paragraph four of the Consent Order for Expedited Jury Trial lists the kinds of evidence which counsel may proffer, and, if admitted, read, show or present to the jury. It includes any materials obtained or produced in discovery, including but not limited to depositions, answers to interrogatories, documents, admissions, expert reports, statements, medical and hospital records, police reports, business records, diagrams, “writings” as defined in *Rule* 801(e) (letters, words, numbers, data compilations, pictures, drawings, photographs, symbols, sounds or combinations thereof or their equivalent, set down or recorded by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or by any other means), and “photographs” as defined in *Rule* 1001(b) (still photographs, X-rays, video tapes, motion pictures and similar forms of reproduced likenesses). Documents and materials not produced in discovery may be admitted in evidence by consent.

To expedite the process of marking the exhibits into evidence before trial, the parties stipulate in paragraph five of the Consent Order to: (1) the authenticity of all documents, writings and photographs; (2) the admissions of all business records, expert reports and written statements of persons not giving live testimony, subject to redaction of inadmissible material; and (3) the reasonableness and necessity of charges in bills and invoices for services, treatments, therapies, prescriptions, goods, materials and supplies. This procedure is based on Evidence *Rule* 101(a)(4) which provides as follows:

If there is no bona fide dispute between the parties as to a relevant fact, the judge may permit that fact to be established by stipulation or binding admission. In civil proceedings, the judge may also permit that fact to be proved by relevant evidence, and exclusionary rules shall

not apply, except *Rule* 403 or a valid claim of privilege.

The process of marking depositions or portions thereof into evidence is facilitated by the agreement of counsel in paragraph five of the Consent Order to waive the following types of objections to deposition testimony: leading, asked and answered, narrative answer, answer not responsive, cumulative, over broad, argumentative, self-serving, and compound question. In the preliminary hearing conducted before the trial begins, the Court rules on the following types of objections to depositions and other proffered evidence: relevance, undue prejudice, misleading, speculative, assuming facts not in evidence, misquoting the evidence or the witness, inadmissible opinion or conclusion, privilege, competence of declarant, and non-compliance with discovery rules or orders. Redactions are made as appropriate; and all arguments and rulings are placed on the record and preserved for appeal.

Because all documents and exhibits are marked into evidence, with appropriate redactions, before the trial begins, no objections are permitted during the trial except as to highly prejudicial evidence inadvertently overlooked. Pursuant to paragraph five of the consent order, however, counsel may object at trial to any misreading or mischaracterization of the evidence or improper argument. The experience has been that such situations are rarely made.

If there is any drawback to the Expedited Jury Trial, it is that absent live expert testimony, the jury may not receive an adequate description of matters beyond its expertise, such as medical conditions or procedures. The Consent Order addresses this problem by providing in paragraph four that the evidence will include definitions, diagrams and explanations of matters beyond the jury's expertise of which judicial notice is taken. Evidence *Rule* 201(b) provides that facts which may be judicially notice include:

- (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute, (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute, (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned.....

In the trials conducted to date, counsel have agreed on the use of definitions of medical terms from medical dictionaries and the use of diagrams and charts from medical textbooks and other reliable and accurate sources. These materials have enabled the juries to understand such matters as herniated cervical discs and open and closed reduction of fractures.

The average length of the Expedited Jury Trials conducted so far has been one and one-half days from preliminary hearing to jury verdict. The benefits have been substantial: satisfied litigants, jurors who are not bored to death, expert fees avoided, schedule hassles eliminated, and time and money saved. Since the Expedited Jury Trial produces a legally valid and appealable jury verdict which complies with the Rules of Evidence and Procedure without the travail of a full-length trial, it can be a useful option for bench and bar.