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How to try cases on a budget

PRACTICAL TIPS FOR CUTTING COSTS WHILE PRESERVING THE BENEFITS OF A TRIAL

Trial preparation can be an expensive undertaking, especially for civil-jury trials where costs can quickly spiral out of control. However, it is entirely possible to manage and even reduce these costs with some smart strategies and pretrial planning.

There are myriad reasons why you may want to keep your jury-trial costs low. You may be concerned about maximizing the recovery for your plaintiff, preserving resources for ongoing care, spending excessively on litigation if the potential award is relatively modest, or reducing the pressure on your firm if you are a solo or manage a small firm. In this article, I'll discuss how to conduct a civil-jury trial on a budget while utilizing legislative programs and code sections at your disposal, leveraging technology and using other tools available to you, while still maintaining quality.

Videotaping treating physicians' depositions

One of the most effective ways to save on trial costs is by videotaping the depositions of your treating physicians and then playing them at trial. Code of Civil Procedure section 2025.620, subdivision (d) allows you to videotape not only expert depositions but also treating or consulting physician depositions – even though the deponent is *available to testify* – and then play these depositions at trial. (Code Civ. Proc., § 2025.620, subd. (d); Code Civ. Proc., § 2025.220.)

This is especially valuable when you have multiple treating physicians involved in a case, or if you only need short snippets of a doctor's testimony to get around potential *Sanchez* issues. By videotaping that doctor's testimony in advance – and giving the court and all parties notice of your intent to play portions of their videotaped deposition at trial – you can avoid having to call the doctor live at trial.

The key benefit here is that it eliminates the need to bring your doctors or experts into the courtroom. As we all know, scheduling of witnesses – especially treating physicians and experts – can be like herding cats and is almost always an issue when coordinating testimony for trials.

Not only does this save on expert witness fees, but it also frees you from having to coordinate their schedules, which can be a logistical nightmare. With videotaped depositions, you gain flexibility and control, ensuring that the trial moves forward smoothly. Another benefit to having videotaped testimony is that you can slide that witness's testimony into gaps where you may be facing scheduling issues with one of your live witnesses.

Some things to be mindful of when you decide to go this route: You should take the deposition understanding what will be objectionable at trial, so you can make sure to keep it in. The best practice is to not use leading questions since they are your own expert, and to make sure you are mindful of any potential *Sanchez* or hearsay objections.

Before trial, you will need to prepare a notice, pursuant to Code of Civil Procedure section 2025.620, subdivision (d), indicating that you reserve the right to play videotaped deposition testimony at trial. Next, you will be required to prepare a table specifying the pages and lines of the testimony you plan to play at trial. It may not be the entirety of the deposition, so you'll need to go through the deposition transcript ahead of time and plan out what portions you decide to play. Then the defense will have an opportunity to posit their objections in the same table, and at trial the judge will determine what comes in and what stays out. At trial, you simply play the pertinent portions of their testimony that the judge has allowed in.

Using delay-pay options

If your trial budget is tight, there are many vendors within our incredible local community that offer delay-pay options for trial-related costs. This includes court reporters for depositions, jury consultants, animations, illustrations and more. Delay pay allows you to defer payments until after the trial, easing the burden of upfront costs. This can be especially helpful when you have to manage multiple expenses simultaneously, or if you are a solo or small firm and need to be mindful of other cash expenses, like for expert witnesses.

Consider not using a court reporter

Court reporters are essential in some trials, but if your case is relatively straightforward, you can waive the use of one to cut costs. Instead of relying on a court reporter for real-time transcripts, have someone from your office – perhaps even a trusted friend – take notes during the trial. As long as you keep thorough notes, you can reference key points during your closing argument. There is no need for dailies and real-time transcripts. References to testimony in general are perfectly appropriate and can be done with good note-taking. This works particularly well for less complex cases where real-time transcripts are unnecessary. (*Editor's note*: Without a trial transcript, appellate review may be unavailable.)

Managing trial technology yourself

While it's tempting to hire trial-tech support – especially if you're dealing with complex exhibits – many attorneys can handle the technology themselves, especially with the modern tools available today. I have never once used trial tech support in any trial. While certainly worth the cost for larger, more complicated cases, I believe it is unnecessary if you are relatively tech savvy and can operate a computer and projector on your own. While thankfully most courthouses now have great technology – like projector screens or TVs with HDMI hookups – I always bring my Nebula projector, laptop, iPad and HDMI cord to trial as a backup just in case. In the past, when trying

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cases in courthouses that only offered an ELMO, I was able to set up my own projector and have my PowerPoint ready to go whenever I needed it for opening, closing, rebuttal and for displaying documents during witness testimony. My projector is the size of a can of Coke, making it a pretty powerful little device for its size, that is also easy to transport to and from the courthouse. In a pinch, you can also pull up any documents or slides on an iPad and lay it under an ELMO, which works surprisingly well too.

Creating your own trial notebooks

Trial notebooks are crucial for organizing your case and staying on top of key information. But while you can outsource this task, doing it yourself is a budget-friendly option that also helps you become intimately familiar with your case. If you don't want to print hundreds or even thousands of pages of documents on your office printer, there are plenty of copy services that can copy these documents for a very small fee, which is a fraction of what third-party trial notebook companies will charge to do it for you. It is basically just printing and organization, an easy task to do yourself. Just like the well-known study that has shown that writing information down helps you to better remember information, organizing the trial notebooks yourself helps you to know *exactly* where everything is when you need it at trial.

Co-counseling to share costs

If you're handling a case as a solo or have a small firm, co-counseling with another attorney or firm can be a cost-effective way to share the financial burden. This allows you to pool resources, such as expert fees, trial technology, and other expenses, to make the trial more affordable. By sharing the cost of bringing the case to trial, you can focus more on the substance of the case and less on the financial strain. Alternatively, you can come to an arrangement with a larger firm to shoulder all the costs associated with the trial, though in those cases you will likely give up more of your fee.

Recoverable costs

Code of Civil Procedure section 998 provides a useful tool for recovering your costs after a trial. If you have decided on a number to settle the case that is high enough that the client will still be happy if accepted, but low enough that you are confident that you can beat it at trial, and have an expired 998 when you are entering a trial, it can be a very useful tool in recovering your costs on the back end, thereby reducing your total costs associated with the case. The recovery of expert fees, filing fees, and even deposition costs can go a long way in offsetting your trial budget. A well-timed 998 will also tack on 10% interest from the date of the expired 998, which can often mean a lot for cases where the client has waited a long time for their day in court.

More specifically, Code of Civil Procedure section 1033.5 provides that the following, most notable, items are recoverable costs under section 1032: *Filing, motion and jury fees*; juror food and lodging; *taking, video recording, and transcribing necessary depositions* (see above – you can videotape your treater's depositions to play at trial *and then* also recover the costs); service of process; witness fees, e*xpert fees*; court transcripts; attorney's fees, when authorized by contract, statute or law; court reporter fees; court interpreter fees; models, enlargement of exhibits and even rental equipment; fees for electronic filing or service of documents; and fees for the hosting of electronic documents. (Code Civ. Proc., § 1035, subd. (a).)

By utilizing these recoverable costs, you can reduce your financial burden and help offset your trial-related expenses.

Taking advantage of the Expedited Jury Trial (EJT) program

For cases with a smaller value or fewer complexities, the Expedited Jury Trial (EJT) program is a great way to save on trial costs. For this reason, your best bet on smaller-value cases is to move the case to limited jurisdiction so you can reap the benefits of the EJT program. The program was established in 2011 by the Expedited Jury Trials Act under Assembly Bill 2284 and was modeled after a similar program in South Carolina. The EJT program was specifically designed to provide a more affordable alternative to traditional jury trials, particularly for cases in limited jurisdiction. Assembly Bill 555, introduced by California State Assembly member Luis Alejo in 2015, removed the program's expiration date and extended it indefinitely.

An expedited jury trial is heard by a smaller jury (8 instead of 12, with no alternates) and the goal is to complete the trial in one day. However, EJTs are limited to a total of three days, with each side allowed a total of three hours to present their evidence (later changed to five hours under AB 555), and in practice most civil-personal-injury EJTs take the full three days. Each side has a limit of three peremptory challenges. However, note that the language in the Act indicates that these parameters exist *unless the parties agree otherwise*. My experience has been that the number of jurors can be flexible – depending on your judge – and in my last EJT the judge did allow an alternate, so just know that most things are flexible, and it doesn't hurt to ask.

One thing to be mindful of with an EJT is that the decision of the jury is binding on the parties (subject to any high/low agreements in place) and appeals and post-trial motions are strictly limited. The only grounds for a new trial or appeal are for judicial misconduct, jury misconduct or "corruption, fraud or other undue means employed in the proceedings of the court, jury or adverse party that prevented a party from having a fair trial." (Assembly Bill No. 2284, 2010 Reg. Sess.)

Opting out of EJT

Prior to 2023, all parties had to agree to participate in the EJT

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program, using a proposed consent order granting expedited jury trial. After the enactment of Code of Civil Procedure section 630.20 in 2023, all limited civil cases are now subject to the EJT program. However, either party may still opt out of the mandatory expedited jury trial procedures if: "(1) Punitive damages are sought; (2) Damages are in excess of insurance policy limits sought; (3) A party's insurer is providing a legal defense subject to a reservation of rights; (4) The case involves a claim reportable to a governmental entity; (5) The case involves a claim of moral turpitude that may affect an individual's professional licensing; (6) The case involves claims of intentional conduct; (7) The case has been reclassified as unlimited pursuant to Section 403.020; (8) The complaint contains a demand for attorney's fees…; or (9) The judge finds good cause exists for the action not to proceed under the rules [of C.C.P. § 630.20]." (Code Civ. Proc., § 630.20.) Notably, while the above language applies to limited jurisdiction cases, those cases that are in *unlimited* jurisdiction can still participate in the EJT program, but with a stipulation or signed proposed consent order by all parties.

A key element of the EJT model is its flexibility, which not only allows, but encourages the parties to enter into agreements governing the rules of procedure (like stipulations regarding foundation and authenticity), as well as high/low agreements.

Expert testimony through written declarations

Most notably, under the EJT program, experts can provide testimony through written declarations rather than being present in the courtroom. This significantly reduces the cost of expert witnesses, as many physicians will sign off on declarations for a minimal fee – or in some cases, for free – especially if you've developed a good working relationship with them. You prepare the expert's declaration based on the medical records and discussions with the provider about their treatment, they review it and then sign it once it's in final form and they agree with all the opinions listed in the document. Make sure, of course, that you have all the traditional expert testimony in here that you would have any other expert testify to at trial. This includes their background, qualifications and experience, the treatment rendered to the patient (including all visit dates), the history of the injury that was communicated by the patient to the doctor, all subjective complaints by the patient and objective findings by the doctor, and, of course, their opinions regarding the reasonableness and necessity of the medical treatment and billing. You will want to include the charges as well, with notations by the doctor that they believe the charges are reasonable and customary in their community.

Additionally, since you have limited time to present your evidence, judges usually encourage the use of demonstrative evidence like PowerPoint presentations or exhibits, which can speed up the trial process. So, use this to your advantage. You'll be able to present a concise, focused case without the delays that typically occur in longer trials, which also means more time for your experts and other witnesses.

Conclusion

Trying a civil jury trial on a budget is entirely achievable with the right strategies in place. By using videotaped depositions, leveraging delay-pay options, managing technology on your own, and utilizing programs like the Expedited Jury Trial, you can significantly reduce your trial costs. Furthermore, thoughtful planning, such as waiving a court reporter or co-counseling to share expenses, can also help you keep costs in check. Finally, don't forget the potential to recover costs through CCP 998 and 1033.5, which can make a big difference in the financial outcome of your case.

With these cost-saving measures, you can focus on presenting a strong case while keeping your budget under control.

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