EXPEDITED CIVIL ACTIONS IN TEXAS AND THE U.S.: A SURVEY OF STATE PROCEDURES AND A GUIDE TO IMPLEMENTING TEXAS'S NEW EXPEDITED ACTIONS PROCESS

Michael Morrison,* James Wren,** and Chris Galeczka***

*Michael D. Morrison, Professor and William J. Boswell Chair of Law, Baylor University School of Law.

**Professor Jim Wren joined the faculty of Baylor Law School in 2006, where he teaches Practice Court. While in private practice, he was designated as a Texas Super Lawyer in Business Litigation every year from the time the designated originated in 2003. He is author of the book *Proving Damages to the Jury*, *2d ed.* (James Publishing, San Francisco, 2013). He is board certified in Civil Trial Law and in Personal Injury Trial Law (by the Texas Board of Legal Specialization), and in Civil Trial Advocacy and Civil Pretrial Practice (by the National Board of Trial Advocacy). He was named as a Baylor University Outstanding Professor in 2012.

***Chris Galeczka has been Reference Librarian at Baylor Law School since June, 2013. He received his Juris Doctor, *magna cum laude*, from Michigan State University College of Law in 2006 and his Master of Science in Information from the University of Michigan in May, 2013.

I. THE EXPEDITED CIVIL ACTION

Effective March 1, 2013, Texas inaugurated a new civil action. The Texas Supreme Court adopted rule changes to address House Bill 274 (HB 274), which was passed in the 2011 legislative session.[1] The stated legislative intent was to promote the prompt, efficient, and cost-effective resolution of certain civil actions.[2] In HB 274, the legislature mandated the Texas Supreme Court to adopt rules to lower the cost of discovery and expedite certain trials through the civil justice system.[3] In addition to addressing an expedited civil actions process, HB 274 required the supreme court to adopt rules governing the early dismissal of actions,[4] the award of

[1] Act of May 25, 2011, 82d Leg., R.S., ch. 203, § 1.01, 2.01, 2011 Tex. Gen. Laws 757 (codified as an amendment to TEX. GOV'T CODE ANN. § 22.004 (West Supp. 2012)).

[2] *Id.* § 2.01.

[3] *Id.*

[4] *Id.* § 1.01 (adding section (g) reading "The supreme court shall adopt rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence.

attorney's fees,[5] permissive appeals,[6] the allocation of litigation expenses,[7] and rules concerning offers of judgment and limiting the designation of third party defendants.[8]

The rules shall provide that the motion to dismiss shall be granted or denied within 45 days of the filing of the motion to dismiss. The rules shall not apply to actions under the Family Code.").

[5] *Id.* § 1.02 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 30.021 (West 2011)) ("In a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss filed under the rules adopted by the supreme court under Section 22.004(g), Government Code, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party. This section does not apply to actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law.").

[6] *Id.* §§ 3.01–02 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 (West 2011); TEX. GOV'T CODE ANN. § 22.225(d) (West Supp. 2012)). Section 51.014 of the Civil Practice and Remedies Code was amended to read:

> (d) *On a party's motion or on its own initiative, a trial court in a civil action* [~~A district court, county court at law, or county court~~] may, *by* [~~issue a~~] written order, *permit an appeal from an order that is* [~~for interlocutory appeal in a civil action~~] not otherwise appealable [~~under this section~~] if:
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> > (1) [~~the parties agree that~~] the order *to be appealed* involves a controlling question of law as to which there is a substantial ground for difference of opinion; *and*
> >
> > (2) an immediate appeal from the order may materially advance the ultimate termination of the litigation[~~; and~~
> >
> > [~~(3) the parties agree to the order~~].
>
> (d-1) Subsection (d) does not apply to an action brought under the Family Code.
>
> (e) An appeal under Subsection (d) does not stay proceedings in the trial court unless:
>
> > (1) the parties agree *to a stay; or*
> >
> > (2) [~~and~~] the trial *or appellate* court[~~, the court of appeals, or a judge of the court of appeals~~] orders a stay of the proceedings *pending appeal*.
>
> *(f) An appellate court may accept an appeal permitted by Subsection (d) if the appealing party, not later than the 15th day after the date the trial court signs the order to be appealed, files in the court of appeals having appellate jurisdiction over the action an application for interlocutory appeal explaining why an appeal is warranted under Subsection (d). If the court of appeals accepts the appeal, the appeal is governed by the procedures in the Texas Rules of Appellate Procedure for pursuing an accelerated appeal. The date the court of appeals enters the order accepting the appeal starts the time applicable to filing the notice of appeal.*

Id. § 3.01 (typeface in original). Section 22.225(d) of the Government Code was amended to read, "A petition for review is allowed to the supreme court for an appeal from an interlocutory order

The legislative mandate to create an expedited actions process came in the form of an amendment to the Texas Government Code, which reads as follows:

> (h) The supreme court shall adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions. The rules shall apply to civil actions in district

described by Section 51.014(a)(3), (6), or (11), *or (d),* Civil Practice and Remedies Code." *Id.* § 3.02 (codified as an amendment to TEX. GOV'T CODE ANN. § 22.225(d) (West Supp. 2012)) (typeface in original).

[7] *Id.* § 4.01 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 42.001(5)–(6) (West 2011)) ("(5) 'Litigation costs' means money actually spent and obligations actually incurred that are directly related to the action [~~case~~] in which a settlement offer is made. The term includes: (A) court costs; (B) *reasonable deposition costs*; *(C)* reasonable fees for not more than two testifying expert witnesses; and *(D)* [~~(C)~~] reasonable attorney's fees. (6) 'Settlement offer' means an offer to settle or compromise a claim made in compliance with *Section 42.003* [~~this chapter~~]."") (typeface in original); *id.* § 4.02 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 42.002(b), (d)–(e) (West 2011)) ("(b) This chapter does not apply to: (1) a class action; (2) a shareholder's derivative action; (3) an action by or against a governmental unit; (4) an action brought under the Family Code; (5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or (6) an action filed in a justice of the peace court *or a small claims court.* (d) This chapter does not limit or affect the ability of any person to: (1) make an offer to settle or compromise a claim that does not comply with *Section 42.003* [~~this chapter~~ ; or (2) offer to settle or compromise a claim in an action to which this chapter does not apply. (e) An offer to settle or compromise that *does not comply with Section 42.003* [~~is not made under this chapter~~] or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle *any* [~~the offering~~] party to recover litigation costs under this chapter.") (typeface in original); *id.* § 4.03 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 42.003 (West 2011)) ("*(a)* A settlement offer must: (1) be in writing; (2) state that it is made under this chapter; (3) state the terms by which the claims may be settled; (4) state a deadline by which the settlement offer must be accepted; and *(b) The parties are not required to file a settlement offer with the court.*") (typeface in original); *id.* § 4.04 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 42.004(d) (West 2011)) ("The litigation costs that may be awarded under this *chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant*.[~~an amount computed by: ~~]") (typeface in original).

[8] *Id.* § 5.01 (codified as an amendment to TEX. CIV. PRAC. & REM. CODE ANN. § 33.004(d) (West 2011)) ("A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure."); *id.* § 5.02 (repealed TEX. CIV. PRAC. & REM. CODE ANN. § 33.004(e) (West 2011)).

> courts, county courts at law, and statutory probate courts in which the amount in controversy, inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind, does not exceed $100,000. The rules shall address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system. The supreme court may not adopt rules under this subsection that conflict with a provision of:
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> (1) Chapter 74, Civil Practice and Remedies Code;
>
> (2) the Family Code;
>
> (3) the Property Code; or
>
> (4) the Tax Code.[9]

The Texas Supreme Court responded by promulgating a new set of rules making a shortened, summary, and expedited (SSE) process mandatory for most purely monetary claims where the total recovery sought, excluding only post-judgment interest, does not exceed $100,000.[10] The new rules govern and alter the trial process from pleading through discovery, trial setting, presentation of witnesses and evidence, and the maximum judgment that may be entered following a verdict.[11]

The court announced the imposition of an expedited actions process by its order issued on February 12, 2013.[12] This process was created through the addition of Texas Rule of Civil Procedure (TRCP) 169, which created the process; by amending Texas Rule of Civil Procedure 47 to require pleading into or out of the process; amending Texas Rule of Civil Procedure 78a to revise the civil case information sheet; and amending Texas Rule of Civil Procedure 190 to impose limitations on discovery.[13] These rule changes apply only to cases filed on or after March 1, 2013.[14]

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[9] *Id.* § 1.01.

[10] Order for the Final Approval of Rules for Dismissals and Expedited Actions, Misc. Docket No. 13–9022 (Tex. Feb. 12, 2013).

[11] *Id.*

[12] *Id.* at 221.

[13] *Id.* at 221–28; *see* TEX. R. CIV. P. 47, 78a, 169, 190, 190.2.

[14] Order for the Final Approval of Rules for Dismissals and Expedited Actions, Misc. Docket No. 13–9022 at 221.

Additionally, Texas Rule of Evidence 902(10)(c), on self-authentication, was amended and, as amended, applies to all pending cases, whenever filed.[15]

II. BACKGROUND

Texas is not the first jurisdiction to adopt a process providing for simplified, shortened, or expedited civil jury trials. In a recent report, the National Center for State Courts (NCSC) published a study covering six other jurisdictions whose courts have undergone efforts to design, identify, and implement workable alternative processes intended to encourage (or, in a minority of cases, force) litigants to pursue simplified, shortened, and expedited trials.[16] Discussion of these processes commonly focuses on their impact on jury trials. However, the processes may impact bench trials as well.[17] The goal has been to create tracks that provide less expensive and streamlined (ready-shortened and skeletonized) pretrial and trial procedures, however the dispute is ultimately tried.[18] The term, "Short, Summary, and Expedited Civil Action programs" (SSE) was used by the NCSC in a joint report with the Institute for the Advancement of the American Legal System (IAALS) and the American Board of Trial Advocates (ABOTA) to refer to this collection of approaches and will be used herein.[19]

The NCSC Report examined these six existing SSE programs in an attempt to identify the characteristics of those disputes best suited to a successful SSE process.[20] Among the characteristics the NCSC concluded suited a dispute to SSE was, not surprisingly, lower-value damage awards.[21] But, it also identified an equally important—one is tempted to say essential—characteristic of disputes suited for SSE: a short, summary and expedited process works best with factually and legally straightforward

[15] *Id.* at 227.

[16] Nat'l Ctr. for State Courts, *Short, Summary & Expedited: The Evolution of Civil Jury Trials*, NCSC, 3–4 (2012) [hereinafter *Evolution*], *available at* http://www.ncsc.org/SJT.

[17] Inst. for the Advancement of the American Legal Sys., *A Return to Trials: Implementing Effective, Short, Summary, and Expedited Civil Action Programs*, iaals.du.edu, 1 (Oct. 2012) [hereinafter *A Return to Trials*], *available at* http://iaals.du.edu/images/wygwam/documents/publications/A_Return_to_Trials_Implementing_Effective_Short_Summary_and_Expedited_Civil_Action_Programs.pdf.

[18] *Evolution*, *supra* note 16, at 83.

[19] *A Return to Trials*, *supra* note 17, at 2.

[20] *Evolution*, *supra* note 16, at 2–5.

[21] *Id.* at 82.

cases since relatively simple facts require less discovery.[22] Additionally, simple facts are less likely to require live expert testimony to explain nuances of the evidence.[23] Simple facts may also enhance parties' willingness to stipulate to the admission of documentary evidence in lieu of live testimony.[24] According to the NCSC Report, these characteristics, taken together, may make possible "an earlier trial date, a truncated pretrial process, simplified trial procedures, or some combination thereof."[25]

Importantly, the NCSC Report concluded that the amount of damages should not be the *sine qua non* in determining whether a dispute is suited for SSE.[26] Common characteristics of the various individual processes include fewer jurors (usually four to eight), expedited trial dates, and truncated trials.[27] However, other issues such as whether a verdict is binding or appealable vary from jurisdiction to jurisdiction.[28] One characteristic shared by every jurisdiction with a process that terminates in an enforceable order is that the process is voluntary. Every jurisdiction but Texas, that is.[29]

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[22] *Id.* at 2–3.

[23] *Id.* at 3.

[24] *See id.* at 3.

[25] *Id.*

[26] *Id.* at 82; *A Return to Trials*, Appendix C, *supra* note 17 (listing factors "most likely" to identify disputes as suitable for a SSE process as: cases with single or limited issues to be resolved; cases where many facts can either be stipulated or determined by the uncontested admission of reports or documents; cases where the likely value doesn't warrant the expenses of live expert testimony or exhaustive trial; cases where it is desirable to limit exposure or guarantee recovery (high-low agreements); cases that can be resolved in one or two days of testimony and deliberations; cases involving limited witness testimony; time sensitive cases where the usual docket wait will be prejudicial to a party's ability to present its case; cases where the parties desire a certain (or almost certain) trial commencement; cases in which the parties fully understand the benefits and risks of participating in the SSE program and *have consented* to those risks; cases with insurance coverage limit concerns where a high-low agreement is desirable; and cases involving insurance coverage where the carrier *has consented* to be bound by the proceeding) (emphasis added).

[27] *See Evolution*, *supra* note 16, at 3.

[28] *Id.*

[29] TEX. R. CIV. P. 169(a)(1). Arizona's system can, in fact, have a mandatory effect, but only as to parties appealing from the award of a mandatory arbitration. In other words, to the mandatory aspect only affects parties already in a separate mandatory process. ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf.

SSE programs have not been enthusiastically embraced in every jurisdiction that has implemented such a program and where "embraced" have had a limited scope.[30] In the two years studied in Arizona, all but two of the SSE trials involved "fender benders."[31] Further, in Arizona, with the retirement of the single judge who championed the program, the program lost "its institutional stature and became 'just another' optional ADR track."[32] In Oregon, only eight cases (rather than the fifty that were anticipated) were scheduled for expedited civil jury trial in the first eighteen months of the program.[33]

The NCSC study concluded that, "[A] characteristic of program success is the extent to which all segments of the local civil bar are confident that the program offers a fair and unbiased forum for resolving cases. Perceptions of fairness relate not only to the likelihood of an objectively just outcome for the litigants, but also to the impact of procedures on the ability of attorneys on both sides of a dispute to manage the case cost-effectively."[34] The low usage of the programs suggests, among other possible explanations, a wide-spread lack of confidence in such trials within the civil bar.

This article will place the Texas rule within the broader national context by summarizing the experience of other jurisdictions that have adopted a variety of short, summary, or expedited civil trial processes across the United States and detail their features through the tables in the appendices. It will highlight recommendations from several advisory groups that the court considered prior to adopting a final version of the process. Then it will analyze the impact of the expedited civil actions process on the practice of law in Texas as well introduce a pilot project providing an alternative approach to expedited trials.

III. A STATE-BY-STATE OVERVIEW OF EXPEDITED TRIAL PROCEDURES[35]

Twenty-one states have legislation or regulations in force providing some variation of expedited trial procedures with some states (Texas, for

[30] *See Evolution, supra* note 16, at 84–85.

[31] *Id.* at 24.

[32] *Id.* at 26.

[33] *Id.* at 60.

[34] *Id.* at 85.

[35] *See infra* Appendix B.

example) having multiple procedures, for a total of 26 distinct programs.[36] Details of the programs vary widely; from the range of claims to which they may apply, their mandatory or voluntary nature, the binding nature of a decision (specifically when features of the traditional trial are curtailed or modified for the sake of expediting and/or lowering the expense of the process), the ability to withdraw from the process, and whether and under what circumstances a decision may be appealed.[37] The following section discusses variations between the different states' programs in terms of a number of factors.

A. Entry into the Process

In twelve states, the process is voluntary and dependent upon the agreement of the parties.[38] Under California's procedure, for example, the expedited trial process begins with the parties signing a "proposed consent order" agreeing to an expedited jury trial.[39] In addition to an agreement to participate in an expedited trial, the consent order requires stipulations to certain key components of the procedure, and may include additional agreements affecting discovery, trial preparation and conduct of the trial.[40]

In three states (Indiana, New Hampshire, Minnesota), the expedited proceeding may be initiated voluntarily by the parties, but may also be proposed and ordered by the court. Under Indiana's alternative dispute resolution rules, the court may order a civil case sent to an advisory mini-trial.[41] If a party objects, the court is to determine "whether a mini-trial is

[36] *See infra* Appendix B. Alabama is not included in this total. As of printing, Alabama has passed legislation directing that rules for expedited trials be promulgated, but this has yet to be accomplished. ALA. CODE § 6–1–3 (LexisNexis 2005 & Supp. 2012).

[37] *See infra* Appendix B, Tables 1–7.

[38] CAL. CIV. PROC. CODE § 630.03(a), (f) (West 2011); FLA. STAT. ANN. § 45.075 (West 2006); NEB. REV. STAT. § 25–1155 (2008); N.Y. C.P.L.R. § 3031 (Consol. 2002); TEX. CIV. PRAC. & REM. CODE ANN. § 154.024(a) (West 2011); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf; IND. ALT. DISPUTE RESOLUTION R. 4.2, 5.2; NEV. SHORT TRIAL R. 4(a)(1); N.Y. CNTY. LOCAL R. CT., doc. 1, para. 1; N.C. SUPER. & DIST. CTS. R. 23; N.D. R. CT. 8.8(a); OR. UNIF. TRIAL CT. R. 5.150; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[39] CAL. CIV. PROC. CODE § 630.03 (West 2011).

[40] *Id.*

[41] IND. ALT. DISPUTE RESOLUTION R. 4.2.

possible or appropriate in view of the objection."[42] An Indiana court may also select any civil case for advisory "summary jury trial consideration," but further provisions specifying that a summary jury trial is to be conducted "in accordance with the agreement of the parties" suggest that one would not be conducted without parties' consent.[43] New Hampshire provides that a court is to designate a case for summary jury trial "ordinarily upon written request of all counsel" but may also do so without such a request.[44] Minnesota provides that a court may order parties to undergo a non-binding alternative dispute resolution process, which could include a summary jury trial.[45]

Three states (Colorado, Nevada, Texas) make entrance into the expedited trial procedure automatic in certain cases, but require affirmative action in others.[46] Colorado's "simplified procedure" automatically applies to civil actions seeking monetary damages of $100,000 or less, exclusive of costs; however, parties in cases seeking monetary damages greater than $100,000 may opt in.[47] Nevada's "Short Trial" procedure applies automatically in cases subject to the state's mandatory court-annexed arbitration program where a party seeks a trial de novo following arbitration, as well as cases that have unsuccessfully gone through mediation in lieu of arbitration.[48] Parties may also stipulate to a Short Trial in lieu of court-annexed arbitration and in cases exempt from mandatory arbitration.[49] In Texas, entry into the various available processes varies with the process chosen. Proceedings under the state's "mini-trial" provisions are initiated by the parties[50] while a summary jury trial has no specified requirements for initiation.[51] Finally, the recently enacted Expedited

[42] *Id.*

[43] *Id.* 5.2–5.3.

[44] N.H. SUPER. CT. R. 171(a).

[45] MINN. GEN. R. PRACTICE 114.02(a)(3), 114.04(a).

[46] TEX. CIV. PRAC. & REM. CODE § 154.024(a) (West 2011); COLO. R. CIV. P. 16.1(b), (e); NEV. SHORT TRIAL R. 4(a).

[47] COLO. R. CIV. P. 16.1(b), (e).

[48] NEV. SHORT TRIAL R. 4(a).

[49] *Id.* 4(b).

[50] TEX. CIV. PRAC. & REM. CODE § 154.024(a) (West 2011).

[51] *Id.* § 154.026 (West 2011) (describing summary jury trial procedure, but unlike mini-trial counterpart above, does not specify manner of initiation).

Actions Process, the subject of this article, is automatic as to any case falling within its sphere.[52]

B. Voluntary vs. Mandatory

In twelve of the twenty-one states and one local jurisdiction, participation in an expedited trial proceeding is completely voluntary and dependent on the agreement of all parties.[53] In the remaining states, participation in an expedited proceeding may be automatic, or it may be mandated by a court in at least some cases.[54]

Colorado's Simplified Procedure, Nevada's Short Trial Procedure and Texas's Expedited Actions Process are automatic in certain cases.[55] Colorado allows parties in actions that fall under its "simplified procedure" to make a timely "election for exclusion."[56] In Nevada, parties choosing to opt out must pay a fee equivalent to the anticipated costs of the Short Trial program.[57] Texas however, only allows removal from its process upon showing of good cause, or if a claimant (but not a counterclaimant), asserts a claim to which the Expedited Actions Process is inapplicable.[58]

Minnesota, Indiana, New Hampshire, Wood County, Ohio, and Lawrence County, Pennsylvania have provisions that allow a court to order

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[52] TEX. R. CIV. P. 169(a)(1).

[53] *See* CAL. CIV. PROC. CODE § 630.03(a), (f) (West 2011); FLA. STAT. ANN. § 45.075 (West 2006); NEB. REV. STAT. ANN. § 25–1155 (2008); N.Y. C.P.L.R. § 3031 (Consol. 2002); VA. CODE ANN. § 8.01–576.1 (2007); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(C); N.C. SUPER. & DIST. CTS. R. 23; OR. UNIF. TRIAL CT. R. 5.150(1)(a); TENN. SUP. CT. R. 31 § 24; UTAH R. JUDICIAL ADMIN. 4–501(1); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013). New York State's summary jury trial procedures also require consent of all parties. *See, e.g.*, N.Y. CNTY. LOCAL R. CT., doc. 1, para. 1 (providing for summary jury trials in New York County).

[54] *See* ALA. CODE § 6–1–3(a) (LexisNexis 2005 & Supp. 2012); COLO. R. CIV. P. 16.1(b), (d); GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A R. 2.1; IND. ALT. DISPUTE RESOLUTION R. 4.2; MINN. GEN. R. PRACTICE 11.05(a), (b); NEV. SHORT TRIAL R. 4(a)(1), (2); N.H. SUPER. CT. R. 171(a), (b); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(A); LAWRENCE CNTY. (PA.) R. CIV. P. L320.1(a); TENN. SUP. CT. R. 31; TEX. R. CIV. P. 169(a)(1).

[55] *See* COLO. R. CIV. P. 16.1(b); NEV. SHORT TRIAL R. 4(a); TEX. R. CIV. P. 169(a).

[56] COLO. R. CIV. P. 16.1(d).

[57] NEV. SHORT TRIAL R. 5(a).

[58] TEX. R. CIV. P. 169(c)(1)(A)–(B).

an expedited trial without the consent of some, or all parties.[59] In Minnesota and Indiana, the summary jury trial is always advisory;[60] in New Hampshire, Wood County, Ohio, and Lawrence County, Pennsylvania, parties may stipulate that it be binding.[61] In Georgia, local courts are authorized to promulgate rules that could potentially make its summary jury trial processes apply to a given "category of cases."[62]

C. Binding vs. Advisory Verdict

In eight states (Arizona**,** California, Colorado, Florida, New York, Oregon, South Carolina, and Utah) the verdict rendered by an expedited trial is always binding.[63]

In five states and two local jurisdictions (Nebraska, Nevada, New Hampshire, North Carolina, Virginia, Wood County, Ohio, and Lawrence County, Pennsylvania) the verdict of an expedited trial is advisory unless the parties stipulate that it will be binding prior to the rendering of a verdict.[64]

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[59] *See* IND. ALT. DISPUTE RESOLUTION R. 4.2; MINN. GEN. R. PRACTICE 114.04(a); N.H. SUPER. CT. R. 171(a); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12; LAWRENCE CNTY. (PA.) R. CIV. P. L320.1(c).

[60] IND. ALT. DISPUTE RESOLUTION R. 1.3(D); MINN. GEN. R. PRACTICE 114.02(a)(3).

[61] N.H. SUPER. CT. R. 171(*l*); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(a); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(b).

[62] GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A R. 2.2.

[63] *See* CAL. CIV. PROC. CODE § 630.07(a) (West 2011); FLA. STAT. ANN. § 45.075 (West 2006); N.Y. C.P.L.R. § 3031 (Consol. 2002); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf; COLO. R. CIV. P. 16.1(a)(1), (2); OR. UNIF. TRIAL CT. R. 5.150(1); UTAH R. JUDICIAL ADMIN. 4–501(9)(C); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013). New York State's summary jury trial procedures are also binding. *See, e.g.*, N.Y. CNTY. LOCAL R. CT., doc. 1 (providing for summary jury trials in New York County).

[64] *See* NEB. REV. STAT. ANN. §§ 25–1155 to –1157 (2008); VA. CODE ANN. § 8.01–576.3 (2007); NEV. SHORT TRIAL R. 32; N.H. SUPER. CT. R. 171(j), (*l*); N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(C); N.C. SUPER. & DIST. CTS. R. 23; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(a); LAWRENCE CNTY. (PA.) R. CIV. P. L320(b).

In a further four states, (Georgia, Indiana, Minnesota, and North Dakota) a verdict under the expedited procedure is always advisory.[65]

In Texas, the nature of the verdict depends on the procedure. "Mini-trial" verdicts are advisory unless otherwise agreed, "summary jury trial" verdicts are always advisory, and decisions under the contemplated expedited actions process are binding.[66]

D. Claims that Trigger the Process

Eight jurisdictions (California, Minnesota, New York, North Carolina, North Dakota, Wood County, Ohio, South Carolina, and Tennessee) do not specify any limits on cases to which their expedited trial procedure could apply. Seven other jurisdictions (Maricopa County, Arizona, Florida, Indiana, Nebraska, Nevada, Lawrence County, Pennsylvania, and Virginia), limit applicability to "civil cases."[67] Georgia limits its summary jury trials to "contested civil cases."[68]

Two states (Oregon and Utah) specify that their expedited trial proceedings are only available in civil cases otherwise eligible for jury trial.[69]

Two states have limitations that cannot be succinctly categorized; Colorado's simplified procedures are limited to civil cases seeking monetary damages, with automatic applicability to those seeking 100,000 or less in damages.[70] New Hampshire limits its summary jury trials to those where witness credibility is unlikely to be of issue, where the case will not set a precedent, and where discovery has been completed.[71]

Texas's Expedited Actions Process is unique among existing procedures in limiting its applicability to claims by an amount-in-controversy cap,

[65] GA. ALT. DISPUTE RESOLUTION R. I; IND. ALT. DISPUTE RESOLUTION R. 1.3(D); MINN. R. GEN. PRACTICE 114.02(a)(3); N.D. R. CT. 8.8(a)(1)(E).

[66] TEX. CIV. PRAC. & REM. CODE §§ 154.024(d), 154.026(e) (West 2011); *See* TEX. R. CIV. P. 169(a)–(b).

[67] *See, e.g.*, NEB. REV. STAT. ANN. § 25–1155 (2008); FLA. STAT. ANN. § 45.075; ARIZ. JUD. BRANCH MARICOPA CNTY.: ALT. DISPUTE RESOLUTION, CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*; IND. ALT. DISPUTE. RESOLUTION R. 4.2, 5.2; NEV. SHORT TRIAL R. 4; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(A); LAWRENCE CNTY. (PA.) R. CIV. P. L320.1(a).

[68] GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A R. 2.1.

[69] OR. UNIF. TRIAL CT. R. 5.150(1); UTAH R. JUDICIAL ADMIN. 4–501(1).

[70] *See* COLO. R. CIV. P. 16.1(b)(1)–(2), (e).

[71] N.H. SUPER. CT. R. 171(a)(1)–(3).

namely, $100,000, including all costs and fees.[72] Texas's existing summary jury trial and mini-trial provisions are voluntary and have no similar limitations on claims.[73] However, Alabama's yet-to-be-made operative legislation authorizing an expedited trial system would limit it to cases where no claimant seeks damages in excess of $50,000.[74]

E. Limitations on Damages

Fifteen jurisdictions do not specify any limitations on damages. These include the four in which all expedited trials are advisory, where a cap would be of little moment.[75]

Statutes or rules in California, North Carolina, and South Carolina explicitly allow for the use of high-low agreements.[76] In Utah, parties agreeing to an Expedited Jury trial are required to include a high-low provision in the agreement.[77]

In addition to the Texas $100,000 cap on recovery, two other states have caps.[78] Colorado caps damage awards at $100,000 for those automatically included in its Simplified Procedure; this cap does not apply to parties seeking a larger amount who opted into the procedure.[79] Nevada caps damages at $50,000, exclusive of attorney's fees, costs, and prejudgment interest, unless the parties stipulate to allow a larger award.[80]

F. Trier of Fact

New York's Simplified Procedure for Court Determination of Disputes, apparently the oldest surviving expedited or simplified process, designates

[72] TEX. R. CIV. P. 169(a)(1).

[73] *See* TEX. CIV. PRAC. & REM. CODE §§ 154.024, 154.026 (West 2011).

[74] *See* ALA. CODE § 6–1–3 (LexisNexis 2005 & Supp. 2012).

[75] GA. ALT. DISPUTE RESOLUTION R. I; IND. ALT. DISPUTE RESOLUTION R. 1.3(D); MINN. R. GEN. PRACTICE 114.02(a)(3); N.D. R. CT. 8.8(a)(1)(E).

[76] CAL. CIV. PROC. CODE § 630.07(a) (West 2011); N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(C); N.C. SUPER. & DIST. CTS. R. 23; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[77] UTAH CODE ANN. § 78B–3–903(6)(d) (LexisNexis 2012).

[78] *See* TEX. R. CIV. P. 169(b).

[79] COLO. R. CIV. P. 16.1(c), (e).

[80] NEV. SHORT TRIAL R. 26.

the trial judge as the finder of fact.[81] Two states (Florida and Nevada) give parties the option of a judge or jury as fact finder.[82]

Two states (Indiana and Texas) provide for an advisory "mini-trial" that is conducted in front of the parties themselves, or their agents.[83] A neutral presiding individual is optional.[84] If a neutral presider is utilized, he or she may issue an advisory opinion (in Texas, parties may stipulate that this opinion is binding).[85]

Expedited trials under North Carolina's Mediated Settlement Conference Rule 13 allow for an expedited trial to a privately selected neutral or jury.[86] North Carolina also provides for summary jury trial under its general court rules.[87]

Colorado's "Simplified Procedure" provides no variation for the trier of fact from the traditional civil trial system.[88]

All other jurisdictions vest decisions of fact in a jury, and thus can be appropriately termed "summary jury trials" or "expedited jury trials."[89]

[81] *See* N.Y. C.P.L.R. § 3031 (Consol. 2002).

[82] FLA. STAT. ANN. § 45.075(4) (West 2006); NEV. SHORT TRIAL R. 4(d).

[83] *See* TEX. CIV. PRAC. & REM. CODE § 154.024(b) (West 2011); IND. ALT. DISPUTE RESOLUTION R. 1.3(C).

[84] TEX. CIV. PRAC. & REM. CODE § 154.024(b)–(c) (West 2011); IND. ALT. DISPUTE RESOLUTION R. 1.3(C).

[85] *See* TEX. CIV. PRAC. & REM. CODE § 154.024(d) (West 2011); IND. ALT. DISPUTE RESOLUTION R. 1.3(C).

[86] N.C. MEDIATED SETTLEMENT CONFERENCE R. 13.

[87] N.C. SUPER. & DIST. CTS. R. 23.

[88] *See* COLO. R. CIV. P. 16.1(a)(1)–(2) (describing purpose of simplified procedure as increasing efficiency by limiting, among other things, expense of discovery, not by altering fundamental features of trial itself).

[89] *See* NEB. REV. STAT. ANN. 25–1156(1) (2008); VA. CODE ANN. § 8.01–576.2 (2007); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf; CAL. CIV. PROC. CODE § 630.01(a) (West 2011); GA. ALT. DISP. RESOL. R. I; MINN. GEN. R. PRACTICE 114.02(a)(1)(4); N.H. SUPER. CT. R. 171(a); N.D. R. CT. 8.8(e); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(E); OR. UNIF. TRIAL CT. R. 5.150(1); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(d); TENN. SUP. CT. R. 31 § 2(q); UTAH R. JUDICIAL ADMIN. 4–501(2)(B); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

G. Who Presides

In seven jurisdictions (Colorado, Florida, Minnesota, Oregon, Lawrence County, Pennsylvania, Utah, and Virginia,) as well as in New York's summary jury trials, the presider at an expedited trial is not specified.[90]

In two jurisdictions (California and Georgia), expedited or summary jury trials are presided over by a judge, magistrate, or other judicial officer.[91]

In three jurisdictions (North Carolina, South Carolina, and Tennessee,) summary trials are presided over by attorneys with specific qualifications who are selected by the parties.[92] Such individuals are termed "special hearing officers" (South Carolina), "qualified neutral persons" (Tennessee), or "presiding officers" or "referees" (North Carolina).[93]

Maricopa County, Arizona uses volunteer attorneys termed "judges pro tempore" (JPT) to conduct short trials; once parties agree on a trial date, court staff contacts an available JPT.[94] Nevada provides that short trials may be presided over by similar "judges pro tempore" as well as by district court judges; the rules provide the assignment of a particular judge or judge pro-tempore may be determined by stipulation of parties, or if this is not possible, by random drawing of three judges' names, with each side permitted to strike one.[95]

Under Indiana and Texas's mini trial procedures, a neutral third party presider may be used but is not required.[96] Nebraska provides that a judge presides, but that a presider is not required.[97] Judges preside over summary

[90] *See* FLA. STAT. § 45.075 (West 2006); VA. CODE ANN. § 8.01–576.1 (2007); COLO. R. CIV. P. 16.01; MINN. GEN. R. PRAC. 114.04(b); OR. UNIF. TRIAL CT. R. 5.150; LAWRENCE CNTY. (PA.) R. CIV. P. L320.1; UTAH R. JUDICIAL ADMIN. 4–501.

[91] CAL. CIV. PROC. CODE § 630.01(a) (West 2011); GA. ALT. DISPUTE RESOLUTION R. I.

[92] N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(A); N.C. SUPER. & DIST. CTS. R. 23; TENN SUP. CT. R. 8, R. PROF'L CONDUCT 2.4; TENN. SUP. CT. R. 31 § 2(q); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[93] N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(A); N.C. SUPER. & DIST. CTS. R. 23; TENN SUP. CT. R. 8, R. PROF'L CONDUCT 2.4; TENN. SUP. CT. R. 31 § 2(q); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[94] Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, 1 (S.C. Mar. 7, 2013).

[95] NEV. SHORT TRIAL R. 3(a)(1)–(c).

[96] TEX. CIV. PRAC. & REM. CODE §§ 154.024(d), 154.026(e); IND. ALT. DISPUTE RESOLUTION R. 1.3(C); TEX. R. CIV. P. 169(a)–(b).

[97] NEB. REV. STAT. ANN. § 25–1156(3) (2008).

jury trials in New Hampshire, Wood County, Ohio, and over cases under New York's Simplified Procedure for Court Resolution of Disputes.[98]

H. Number of Jurors

Ten jurisdictions (Indiana, Minnesota, Nebraska, New Hampshire, Wood County, Ohio, Oregon, Lawrence County, Pennsylvania, South Carolina, Texas, and Utah), provide for a six-person summary jury.[99] In New Hampshire, parties may stipulate to a smaller jury.[100] In South Carolina, fast-track juries are to consist of "no more than 6" jurors.[101] In Texas, parties may stipulate to a smaller or larger jury.[102]

California's expedited jury trial rules provide for an eight-person jury, but the parties may stipulate to a smaller jury.[103] New York's summary jury trial rules vary by county.[104] No number of jurors is specified in New York County, but Bronx County uses a six-person jury unless the parties stipulate to fewer.[105] Nevada allows parties to choose a four, six, or, on a showing of good cause, an eight-person jury.[106] Summary Jury Trials in Maricopa County, Arizona, utilize a four-person jury.[107] Virginia, uniquely, uses a seven-person jury for summary jury trials.[108]

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[98] *See* N.H. SUPER. CT. R. 171(i) (referring to "presiding judge"); N.Y. C.P.L.R. § 3031 (Consol. 2002); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(E), (I), (J) (referring to judge's duties during voir dire and during trial).

[99] NEB. REV. STAT. ANN. § 25–1156(1) (2008); TEX. CIV. PRAC. & REM. CODE § 154.026(c) (West 2011); IND. ALT. DISPUTE RESOLUTION R. 5.4; MINN. GEN. R. PRACTICE 114.02(a)(3); N.H. SUPER. CT. R. 171(d); WOOD. CNTY. CT. COM. PL. GEN. R. 7.12(E); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(d); UTAH R. JUDICIAL ADMIN. 4–501(2)(B); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 9 (S.C. Mar. 7, 2013).

[100] N.H. SUPER. CT. R. 171(d).

[101] Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 9 (S.C. Mar. 7, 2013).

[102] TEX. CIV. PRAC. & REM. CODE § 154.026(c) (West 2011).

[103] CAL. CIV. PROC. CODE § 630.04(a) (West 2011).

[104] *Compare* N.Y. CNTY. LOCAL R. CT., doc. 1, *with* BRONX CNTY. (N.Y.) FILING. R. doc. 11.

[105] N.Y. CNTY. LOCAL R. CT. doc. 1; BRONX CNTY. (N.Y.) FILING R. doc. 11, ¶ 8.

[106] NEV. SHORT TRIAL R. 26.

[107] ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf.

[108] VA. CODE ANN. § 8.01–576.2 (2007).

Five jurisdictions (Colorado, Florida, Georgia, North Dakota, and Tennessee), as well as summary jury trials under North Carolina's general court rule, do not specify a number of jurors.[109] Under its Mediated Settlement Rules North Carolina specifies a twelve-person jury for a summary jury trial, but the parties may agree to a smaller number.[110]

I. Number Required for Verdict

Maricopa County, Arizona requires agreement of three of four jurors for verdict.[111] California, as a default requires the agreement of six of eight jurors, though parties may stipulate to a lower verdict threshold.[112] Utah, Wood County, Ohio, and Lawrence County, Pennsylvania require agreement of five of six jurors; in Utah parties may reduce this figure to four of six.[113] New Hampshire and North Carolina (for proceedings under the mediated settlement rules) encourage jurors to reach a consensus verdict, but allow for separate and individual verdicts if this is not possible.[114] In New Hampshire, a non-consensus verdict cannot be binding.[115] North Carolina, however, does not specify how many votes are needed for a non-consensus verdict to be binding.[116]

J. Voir Dire

Most jurisdictions specify how voir dire is to be conducted in an expedited or summary jury trial.[117] Three jurisdictions (Florida, Nevada,

[109] FLA. STAT. ANN. § 45.075; COLO. R. CIV. P. 16.1; GA. ALT. DISPUTE RESOLUTION R. I; N.C. SUPER. & DIST. CTS. R. 23; N.D. R. CT. 8.8(a)(1)(E); TENN. SUP. CT. R. 31 § 24.

[110] N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(E).

[111] ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*.

[112] CAL. CIV. PROC. CODE § 630.07(b) (West 2011).

[113] WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(K); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(g); UTAH R. JUDICIAL ADMIN. 4–501(2)(B).

[114] N.H. SUPER. CT. R. 171(j); N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(H).

[115] N.H. SUPER. CT. R. 171(l).

[116] N.C. SUPER. CT. MEDIATED SETTLEMENT CONFERENCE R. 13(H); N.C. SUPER. & DIST. CTS. R. 23.

[117] *See generally* CAL. CIV. PROC. CODE § 630.04(b) (West 2011); FLA. STAT. ANN. § 45.075(7) (West 2006); NEB. REV. STAT. ANN. § 25–1156(1) (2008); VA. CODE ANN. § 8.01–576.2 (2007);

ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at*

and Utah) have time limits for voir dire; Florida provides that jury selection in its entirety is limited to one hour.[118] Nevada allows only fifteen minutes per side, and Utah sets the limit at thirty minutes per side.[119] California directs that voir dire should take "approximately one hour" and Indiana states that the jury should be selected in "an expedited fashion."[120] Texas's Expedited Actions Process sets an eight-hour cap on total trial time, including voir dire.[121] Four jurisdictions (Nebraska, South Carolina, Lawrence County, Pennsylvania, and New York County, New York) leave the determination to the trial judge or presiding officer.[122]

Nebraska, Nevada and South Carolina sharply limit peremptory challenges, allowing only two per side.[123] At the other end of the spectrum, New Hampshire and Virginia specify that jurors in a summary jury trial are to be selected in the same manner as for a traditional jury trial.[124]

K. Calendar Limits on Discovery

Three jurisdictions (Florida, Oregon, and Texas) have time limits on discovery that set the time at which the "discovery clock" begins to run.[125] Florida requires all discovery to be complete within sixty days of the date a

http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf; IND. ALT. DISPUTE RESOLUTION R. 5.4; NEV. SHORT TRIAL R. 23; N.H. SUPER. CT. R. 171(d); BRONX CNTY. (N.Y.) FILING R. doc. 11, ¶ 8; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(E); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(E); LAWRENCE CNTY. (PA.) R. CIV. P. L320.3(a)–(m); UTAH. R. JUDICIAL ADMIN. 4–501(2)(B)–(C); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 9 (S.C. Mar. 7, 2013).

[118] FLA. STAT. ANN. § 45.075(7) (West 2006).

[119] NEV. SHORT TRIAL R. 23; UTAH R. JUDICIAL ADMIN. 4–501(2)(C).

[120] CAL. R. CT. 3.1549; IND. ALT. DISPUTE RESOLUTION R. 5.4.

[121] TEX. R. CIV. P. 169(d)(3).

[122] NEB. REV. STAT. ANN. § 25-1156(1) (2008); N.Y. CNTY. LOCAL R. CT. doc. 1, ¶ 8; LAWRENCE CNTY. (PA.) R. CIV. P. L320.3; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 9 (S.C. Mar. 7, 2013). *See also* BRONX CNTY. (N.Y.) FILING R. doc. 11, ¶ 8.

[123] NEB. REV. STAT. ANN. § 25–1156(1) (2008); NEV. SHORT TRIAL R. 23;

Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 9 (S.C. Mar. 7, 2013).

[124] VA. CODE ANN. § 8.01–576.2 (2007); N.H. SUPER. CT. R. 171(d).

[125] *See* FLA. STAT. ANN. § 45.075(1) (West 2006); OR. UNIF. TRIAL CT. R. 5.150(4)(a); TEX. R. CIV. P. 190.2(b)(1).

case is designated for expedited trial.[126] Oregon requires disclosure of expected witnesses and a wide range of documents within four weeks of such designation, unless parties agree otherwise in their discovery plan.[127] Texas requires that all discovery be conducted within a discovery period that begins when suit is filed, and ends 180 days after the first request for discovery of any kind is served on a party.[128]

L. Substantive Limits on Discovery

Four jurisdictions (Colorado, Florida, Oregon, and Texas) place substantive limits on discovery.[129] Colorado's simplified procedure generally prohibits use of traditional discovery devices, relying instead on extensive mandatory disclosure requirements.[130] Florida provides that the court is to determine the number of depositions allowed.[131] Oregon allows only two depositions, one set of requests for admission, and one set of requests for production within the process.[132] Oregon and California also provide that parties may stipulate to further limitations on discovery.[133] Texas limits each party to six hours in total to examine and cross-examine witnesses in oral depositions; this may be extended to ten hours by mutual agreement, and beyond that with consent of the court.[134] Parties are also limited to serving fifteen interrogatories (with exceptions), fifteen requests for production, and fifteen requests for admissions.[135]

M. Rules of Evidence and Procedure

Fourteen jurisdictions are silent as to any particular set of rules of evidence and procedure for expedited or summary trials.[136] Six jurisdictions

[126] FLA. STAT. ANN. § 45.075(1) (West 2006).

[127] OR. UNIF. TRIAL CT. R. 5.150(4)(a).

[128] TEX. R. CIV. P. 190.2(b)(1).

[129] FLA. STAT. ANN. § 45.075(3) (West 2006); COLO. R. CIV. P. 16.1(a)(1)–(2); OR. UNIF. TRIAL CT. R. 5.150(4)(b)–(d); TEX. R. CIV. P. 190.2(b)(2)–(6).

[130] *See* COLO. R. CIV. P. 16.1(a)(1)–(2).

[131] FLA. STAT. ANN. § 45.075(3) (West 2006).

[132] OR. UNIF. TRIAL CT. R. 5.150(4)(b)–(d).

[133] CAL. R. CT. 3.1547(b); OR. UNIF. TRIAL CT. R. 5.150(3)(a)–(b).

[134] TEX. R. CIV. P. 190.2(b)(2).

[135] TEX. R. CIV. P. 190.2(b)(3)–(6).

[136] *See* ALA. CODE § 6–1–3 (LexisNexis Supp. 2012); GA. CODE ANN. § 15–23–2 (West 2003); MINN. STAT. ANN. § 604.11 (West 2010); NEB. REV. STAT. ANN. §§ 25–1154 to –1157

(Maricopa County, Arizona, California, Colorado, Florida, South Carolina, and Utah) clearly state that traditional rules of evidence and procedure apply except where modified.[137]

Four of the above (Maricopa County, California, South Carolina, and Utah) encourage or allow modifications of rules by stipulation.[138] Three jurisdictions (Arizona, Nevada, and Lawrence County, Pennsylvania) provide for rules of evidence and procedure specific to expedited trials.[139] Colorado also does this to a certain degree.[140]

N. Trial Time Limits

Ten jurisdictions place time limits on the length of the trial itself.[141] These vary from the one-hour per side (may be extended at the court's discretion) established in Ohio's summary jury trial program in Wood

(2008); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, 2, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf; GA. ALT. DISPUTE RESOLUTION R. I; GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS. app. A, Introduction & R. 2; IND. ALT. DISPUTE RESOLUTION R. 1.3, 1.5, 4, 5; MINN. GEN. R. PRACTICE 114.02, 114.08, 114.13; N.H. SUPER. CT. R. 171; BRONX CNTY. (N.Y.) FILING R. doc. 11; N.Y. CNTY. LOCAL R. CT. doc. 1; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13; N.C. SUPER. & DIST. CTS. R. 23; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12; OR. UNIF. TRIAL CT. R. 5.150(3); TENN. SUP. CT. R. 31, §§ 2–3, 10; TEX R. CIV. P. 169(d).

[137] CAL. CIV. PROC. CODE §§ 630.02(a)–(b), 630.06 (West 2011); FLA. STAT. ANN. § 45.075(13) (West 2006); ARIZ. JUD. BRANCH MARICOPA CNTY.: ALT. DISPUTE RESOLUTION, CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, 2; COLO. R. CIV. P. 16.1(k);Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 11 (S.C. Mar. 7, 2013).

[138] *See generally* CAL. R. CT. 3.1547; UTAH R. JUDICIAL ADMIN. 4–501; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶¶ 11–12 (S.C. Mar. 7, 2013).

[139] *See generally* ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*; NEV. SHORT TRIAL R. 3–35; LAWRENCE CNTY. (PA.) R. CIV. P. L320.1–L320.4.

[140] *See* COLO. R. CIV. P. 16.1.

[141] FLA. STAT. ANN. § 45.075(6)–(9) (West 2006); ARIZ. JUD. BRANCH MARICOPA CNTY.: ALT. DISPUTE RESOLUTION, CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, 2; CAL R. CT. 3.1550; NEV. SHORT TRIAL R. 21; N.H. SUPER. CT. R. 171(f); N.Y. CNTY. LOCAL R. CT. doc. 11, ¶ 8; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(H); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(e); TEX. R. CIV. P. 169(d)(3); UTAH R. JUDICIAL ADMIN. 4–501(2)(E); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 10 (S.C. Mar. 7, 2013).

County, up to the eight hour-per-side limit (extendable to twelve hours per side on good cause) established by Texas's Expedited Actions Process.[142]

O. Rules Regarding Witnesses

Ten jurisdictions have limits on the presentation of live testimony.[143] Nebraska, New Hampshire, and Wood County, Ohio, have outright prohibitions.[144] Other less-severe limitations include a two-witness limit in New York County, New York, a requirement to agree to limits on witnesses (Utah), and admonitions to discourage or limit live testimony (Maricopa County, Arizona, and South Carolina).[145] To counterbalance such restrictions, many jurisdictions either specify or allow parties to stipulate to presentation devices such as direct reading of depositions or other evidence by attorneys.[146]

P. Withdrawal from Expedited Trial Process

Sixteen jurisdictions, as well as Indiana's summary jury trial rules, are silent on the issue of a party's ability to withdraw from the expedited trial process.[147] Colorado allows for timely election to withdraw within thirty-

[142] TEX. R. CIV. P. 169(d)(3); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(H).

[143] *See* NEB. REV. ST. ANN. § 25-1156(4) (2008); VA. CODE ANN. § 8.01-576.3 (2007); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*; COLO. R. CIV. P. 16.1(k)(7); N.H. SUPER. CT. R. 171(f); N.Y. CNTY. LOCAL R. CT. doc. 1, ¶ 8; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13(F); LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(e); UTAH. R. JUDICIAL ADMIN. 4–501(3)(C)(i); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 12(c) (S.C. Mar. 7, 2013).

[144] NEB. REV. STAT. ANN. § 25–1156(4) (2008); N.H. SUPER. CT. R. 171(f); WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(G).

[145] ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION, CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*; N.Y. CNTY. LOCAL R. CT. doc. 1, ¶ 8; UTAH R. JUDICIAL ADMIN. 4–501(3)(C)(i); Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 12(c) (S.C. Mar. 7, 2013).

[146] *See, e.g.*, N.H. SUPER. CT. R. 171(f).

[147] *See* ALA. CODE § 6–1–3 (LexisNexis Supp. 2012); FLA. STAT. ANN. § 45.075 (West 2006); GA, CODE ANN. § 15–23–2 (West 2003); MINN. STAT. ANN. § 604.11 (West 2010); TEX. CIV. PRAC. & REM. CODE § 154.024(West 2011); UTAH CODE ANN. §§ 78B–3–901 to –909 (LexisNexis 2012); VA. CODE ANN. §§ 8.01–576.1 to –576.3 (2007); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*; GA. ALT. DISPUTE RESOLUTION R. I; GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A, Introduction & R. 2; IND. ALT. DISPUTE RESOLUTION

five days after case is "at issue."[148] This provision is potentially problematic if sought to be used by a party who opted into the procedure. An opt-in can be made up to forty-nine days after the case is "at-issue," so it is possible that a party that opts-in late is automatically barred from withdrawing.[149]

Nevada allows any party to timely remove a case from its Short Trial Program; in cases that come into the program from a court-annexed arbitration or mediation program, this removal must be made within ten days of the request for trial.[150] In either case, a fee applies that is designed to reflect the costs of actually holding the Short Trial procedure.[151]

Two jurisdictions (Indiana, in its mini-trial program, and New Hampshire) allow a party to object to proceeding with the expedited procedure, but provide little to guide the court's decision on an objection.[152]

California and Colorado allow for withdrawal in specified circumstances. In California, withdrawal may be based on the agreement of all parties or on showing of good cause.[153] In Colorado, untimely withdrawal requires a showing of "substantially changed circumstances" rendering continuation unjust.[154] South Carolina provides that an agreement for a Fast-Track Jury Trial is irrevocable, absent fraud.[155]

Q. Record

Fifteen jurisdictions make no provision regarding creation of a record during an expedited trial proceeding.[156] One jurisdiction, Utah, provides

R. 1.3, 1.5, 5; MINN. GEN. R. PRACTICE 114.02, 114.08, 114.13; NEB. REV. STAT. ANN. §§ 25–1154 to –1157 (2008); N.Y. CNTY. LOCAL R. CT. doc. 1; BRONX CNTY. (N.Y.) FILING. R. doc. 11; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13; N.C. SUPER. & DIST. CTS. R. 23; N.D. R. CT. 8.8; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12; OR. UNIF. TRIAL CT. R. 5.150(3); TENN. SUP. CT. R. 31, §§ 2–3, 10; UTAH R. JUDICIAL ADMIN. 4–501.

[148] COLO. R. CIV. P. 16.1(d).

[149] COLO. R. CIV. P. 16.1(e).

[150] NEV. SHORT TRIAL R. 5(a)(1)–(2).

[151] NEV. SHORT TRIAL R. 5(b).

[152] IND. ALT. DISPUTE RESOLUTION R. 4.2; N.H. SUPER. CT. R. 171(b).

[153] CAL. CIV. PROC. CODE § 630.03(b)(1)–(2) (West 2011).

[154] COLO. R. CIV. P. 16.1(k)(10).

[155] Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 1(S.C. Mar. 7, 2013).

[156] ALA. CODE § 6–1–3 (LexisNexis Supp. 2012); CAL. CIV. PROC. CODE §§ 630.01–630.12 (West 2011); FLA. STAT. ANN. § 45.075 (West 2006); GA. CODE ANN. § 15–23–2 (West 2003); NEB. REV. STAT. ANN. §§ 25–1154 to –1157 (2008); TEX. CIV. PRAC. & REM. CODE § 154.024

that a record be kept just as in a traditional trial.[157] Indiana and North Dakota deem records of expedited trial proceedings as confidential, similar to settlement negotiations.[158] New Hampshire forbids a record except in "extraordinary circumstances."[159]

Nebraska deems that a record is "not required."[160] Wood County, Ohio allows a party to create a transcript at its own expense.[161]

R. Appealability

Fourteen jurisdictions are silent on the ability to appeal a decision in an expedited trial.[162] Nevada allows appeal of a final judgment akin to a traditional trial judgment, so long as fees to the presiding judge are paid.[163] Nebraska has a blanket prohibition on appeal.[164] New York's Simplified

(West 2011); VA. CODE ANN. §§ 8.01–576.1 to –576.3 (2007); ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf; JUD. BRANCH OF MARICOPA CNTY.: SHORT TRIAL PROGRAM BENCHBOOK, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/ docs/shortTrialBenchBook.pdf; CAL. R. CT. 3.1545–3.1552; COLO. R. CIV. P. 16. 1; GA. ALT. DISPUTE RESOLUTION R. I; GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A, Introduction & R. 2; N.Y. CNTY. LOCAL R. CT. doc. 1; BRONX CNTY. (N.Y.) FILING. R. doc. 11; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13; N.C. SUPER. & DIST. CTS. R. 23; OR. UNIF. TRIAL CT. R. 5.150(3); TENN. SUP. CT. R. 31, §§ 2–3, 10; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[157] *See* UTAH CODE ANN. § 78B–3–902 (LexisNexis 2012); UTAH R. JUDICIAL ADMIN. 4–201.

[158] IND. ALT. DISPUTE RESOLUTION R. 5.6; N.D. R. CT. 8.8(d).

[159] N.H. SUPER. CT. R. 171(k).

[160] NEB. REV. ST. ANN. § 25–1157 (2008).

[161] WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(N).

[162] *See* ALA. CODE § 6–1–3 (LexisNexis Supp. 2012); FLA. STAT. ANN. § 45.075 (West 2006); GA. CODE ANN. § 15–23–2 (West 2003); MINN. STAT. ANN. § 604.11 (West 2010); NEB. REV. STAT. §§ 25–1154 to –1157 (2008); TEX. CIV. PRAC. & REM. CODE § 154.024 (West 2011); VA. CODE ANN. §§ 8.01–576.1 to –576.3 (2007); COLO. R. CIV. P. 16. 1; GA. ALT. DISPUTE RESOLUTION R. I; GA. UNIF. R. DISPUTE RESOLUTION PROGRAMS app. A, Introduction & R. 2; IND. ALT. DISPUTE RESOLUTION R. 1.3, 1.5, 5; MINN. GEN. R. PRACTICE 114.02, 114.08, 114.13; N.H. SUPER. CT. R. 171; N.C. MEDIATED SETTLEMENT CONFERENCE R. 13; N.C. SUPER. & DIST. CTS. R. 23; N.D. R. Ct. 8.8; WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12; OR. UNIF. TRIAL CT. R. 5.150(3); TENN. SUP. CT. R. 31, §§ 2–3, 10.

[163] NEV. SHORT TRIAL R. 33.

[164] NEB. REV. ST. ANN. § 25–1157 (2008).

Procedure allows for appeal, but with a very high standard of deference; the judge's decisions on questions of fact are to be upheld if there is "any substantial evidence" to support them.[165]

Three jurisdictions (Arizona, California, and South Carolina) permit appeal only on limited grounds such as fraud or judicial or juror misconduct (California).[166] Summary jury trial rules in New York allow for mistrial on similar grounds.[167] Utah allows for appeal on the above grounds as well as "to correct errors of law" (which could potentially allow a wide variety of appeals).[168]

S. Statistics

One phenomenon characteristic of all programs and jurisdictions is the paucity of statistics regarding the degree to which expedited trial procedures are utilized or their outcomes. No state court administrators' annual statistical review of judicial business reports such figures. Statistics provided here come from reports published by the National Center for State Courts and anecdotal information from a variety of sources, most of which indicate that, in the vast majority of cases, expedited trial programs are significantly underutilized and in some cases, almost nonexistent in practice.[169]

IV. TEXAS

The impetus for the Texas Expedited Actions Process can be traced to House Bill 274 (HB 274).[170] As initially filed, the process would have applied to claims of not less than $10,000 and not more than $100,000 and would have been voluntary, requiring a claimant's election.[171] However, once an election was made, the process was binding on all parties unless a

[165] N.Y. C.P.L.R. § 3037 (Consol. 2002).

[166] *See* CAL. CIV. PROC. CODE § 630.09(a)(1)–(3) (West 2011); ARIZ. JUD. BRANCH MARICOPA CNTY.: ALT. DISPUTE RESOLUTION, CIVIL SHORT TRIAL ADMINISTRATIVE PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf; Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 3 (S.C. Mar. 7, 2013).

[167] *See, e.g.*, N.Y. CNTY. LOCAL R. CT. doc. 1, ¶ 3.

[168] UTAH CODE ANN. § 78B–3–906(1) (LexisNexis 2012).

[169] *See Evolution*, *supra* note 16. *See infra* Table 8.

[170] *See* Tex. H.B. 274, 82d Leg., R.S., § 5, ch. 29A.001–.005 (2011).

[171] *Id.* ch. 29A.003(a).

defendant could make a good faith claim that recovery might exceed $100,000.[172] The list of claims that would comprise the total in determining whether the process applied included, "actual damages, including economic and noneconomic damages, and additional damages, including knowing damages, punitive damages, treble damages, penalties, prejudgment interest, post-judgment interest, attorney's fees, litigation costs, costs of court, and all other damages of any kind."[173]

It would have applied the process to any party who was a claimant or defendant, including a county, a municipality, a public school district, a public junior college district, a charitable organization, a nonprofit organization, a hospital district, a hospital authority, any other political subdivision of the state, and the State of Texas.[174] The only substantive limitation was that it expressly would not apply to any civil action primarily governed by the Family Code.[175]

Following the first round of amendments, HB 274 identified Section 22.004(h) of the Government Code as the home for the mandate for an Expedited Civil Actions process.[176] The amended bill continued to apply to claims from $10,000 to $100,000 but changed the wording of what claims were included to read, "inclusive of all claims for damages of any kind, whether actual or exemplary, a penalty, attorney's fees, expenses, costs, interest, or any other type of damage of any kind."[177] The substantive limitations of the original bill were expanded to restrict the supreme court from adopting rules that "conflict with a provision of Chapter 74, Civil Practice and Remedies Code; the Family Code; the Property Code; or the Tax Code.[178] The list of entities to which the rule was to apply was omitted, as was any language dealing with how the process would be triggered.[179]

[172] *Id.* ch. 29A.003(d).

[173] *Id.* ch. 29A.001(3).

[174] *Id.* ch. 29A.002(a).

[175] *Id.* ch. 29A.002(b).

[176] *See* Tex. H.B. 274, 82d Leg., R.S., art. 2, § 2.01 (2011).

[177] *Id.*

[178] *Id.*

[179] *Id.*

A. Bills 3 to 6[180]

As part of the next amendment to HB 274, the $10,000 floor was eliminated, and the process was specifically made to apply to "civil actions in district courts, county courts, county courts at law, and statutory probate courts."[181] While HB 274 was amended three more times, the language dealing with expedited civil actions was left unchanged from that of this version.[182] The bill was passed by both houses on May 25, 2011 and sent to the governor who signed it on May 30th.[183] With an effective date of September 1, 2011, the ball was now in the Texas Supreme Court's "court."[184]

B. The Texas Supreme Court

The supreme court appointed a task force, chaired by Tom Phillips, former Chief Justice of the Texas Supreme Court, to propose rule changes for these "expedited actions."[185] The task force reviewed the expedited actions rules proposed by a group (the Working Group) composed of representatives of the Texas Chapter of the American Board of Trial Advocates (TEX-ABOTA), the Texas Association of Defense Counsel (TADC), and the Texas Trial Lawyers Association (TTLA).[186]

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[180] *See* H.J. of Tex., 82d Leg., R.S. 3209 (2011).

[181] *Id.*

[182] *Id.* at 3209, 3213–15.

[183] S.J. of Tex., 82d Leg., R.S. 3715 (2011); H.J. of Tex., 82d Leg., R.S. 6917 (2011).

[184] Act of May 25, 2011, 82d Leg., R.S. ch. 203, § 2.01, 2011 Tex. Gen. Laws 757, 757 (West) (codified as an amendment to TEX. GOV'T CODE § 22.004 (West Supp. 2012)).

[185] Order Appointing Task Force for Rules in Expedited Actions, Misc. Docket No. 11–9193 (Tex. Sept. 26, 2011). The other members of the Task Force were: David Chamberlain, Denis Dennis, Martha S. Dickie, Wayne Fisher, Jeffrey J. Hobbs, Lamont Jefferson, Hon. Scott Jenkins, Kennon Peterson, Bradley Parker, Ricardo Reyna, and Alan Waldrop. *Id.*

[186] Letter from David Chamberlain to the Hon. Nathan Hecht, 1 (Aug. 25, 2011), *available at* http://www.chamberlainmchaney.com/tlu_updates/tlu_2011/20111020/Working%20Group%20Letter%20to%20Hecht%20.pdf. Representatives of TEX-ABOTA included David E. Chamberlain (Treasurer), Gerald Powell (Abner V. McCall Professor of Evidence, Baylor Law School), Dicky Grigg (Past President of TEX-ABOTA and Past President of the International Academy of Trial Lawyers), David Cherry (Past President of TEX-ABOTA), and Mike Wash. Representatives of TADC included Keith B. O'Connell (President) and Dan Worthington (Executive Vice President). Representatives of TTLA included Mike Gallagher, Craig Lewis (Past President of TEX-ABOTA), Brad Parker (VP of Legislative Affairs) and Jay Harvey (Past President). Additionally, Mr. Corey Pomeroy (General Counsel to Senator Robert Duncan) attended on Senator Duncan's behalf. Former Justice Craig Enoch, Representative Tryon

Following its receipt of the task force report proposing new rules and rule amendments, the Court requested the Supreme Court Advisory Committee to review the issue as well.[187] The Court also received a proposal from the State Bar of Texas Court Rules Committee.[188] The Court reviewed the various proposals and drafted a set of rules that implements a mandatory expedited action process for cases under $100,000.[189] The proposed rules—including new Texas Rule of Civil Procedure 169 and amendments to Texas Rules of Civil Procedure 47 and 190 and Texas Rule of Evidence 902—were promulgated in its order of November 13, 2012, soliciting comments.[190]

An important, if not the predominant, issue in formulating rules for expedited actions was whether the rules should be mandatory or merely encourage lawyers to agree to more expedited procedures.[191] Ultimately, the court concluded that the objectives of HB 274 could not "be achieved, or the benefits to the administration of justice realized, without rules that compel expedited procedures in smaller cases."[192] It reached this conclusion notwithstanding that the Working Group, the State Bar Rules Committee, the task force, and Supreme Court Advisory Committee all recommended a voluntary process.[193] Admittedly, though, both the task force and the Advisory Committee had close votes.[194]

Lewis, (R-Odessa), and Ms. Pat Long Weaver, members of the State Bar of Texas Section of Litigation, served as a resource to the working group. *Id.*

[187] *See* Order Adopting Rules for Dismissals and Expedited Actions, Misc. Docket No. 12–9191 (Tex. Nov. 13, 2012), *printed in* 75 Tex. Bar. J. 870, 871.

[188] *See generally* State Bar of Texas Committee on Court Rules, *Request for New Rule 169a*, STATE BAR OF TEXAS, (June 2011–May 2012) [hereinafter *Request for New Rule 169a*], *available at* http://www.texasbar.com/AM/Template.cfm?Section=committee&Template=/CM/ContentDisplay.cfm&ContentID=21232.

[189] *See* Order Adopting Rules for Dismissals and Expedited Actions, Misc. Docket No. 12–9191, at 5 (Tex. Nov. 13, 2012).

[190] *Id.* at 8–15.

[191] *Id.*; *see also* Meeting of the Texas Supreme Court Advisory Committee, 23940 (Jan. 27, 2012).

[192] Order Adopting Rules for Dismissals and Expedited Actions, Misc. Docket No. 12–9191, 5 (Tex. Nov. 13, 2012).

[193] Meeting of the Texas Supreme Court Advisory Committee, 24034 (Jan. 27, 2012) (statement of Chip Babcock, Chair) ("Well, we're not going to go behind the vote, though. So everybody who is in favor of, quote, mandatory, raise your hand. Okay. All those in favor of voluntary, raise your hand. The vote is 18 mandatory, 26 voluntary, the Chair not voting, and let's take our break.") *See also* Meeting of the Texas Supreme Court Advisory Committee, supp. at 4 (Jan. 27, 2012) (Task Force Report); *Request for New Rule 169a*, *supra* note 188. Some have

C. The Working Group

The Working Group was formed to assist the Supreme Court and the Supreme Court Advisory Committee.[195] Its work product was a set of proposed rules to implement the mandate of HB 274 submitted to the Supreme Court in its August 25, 2011 report.[196] These rules represented the unanimous consensus of each member of the working group and were approved by the governing board of each organization as well.[197]

The working group concluded that for any set of rules to be effective, accepted, and actually used, it was imperative that the procedure be voluntary.[198] Consequently, its unanimous recommendation was for a voluntary process, noting that, "It is a voluntary procedure in every other jurisdiction implementing the same or a similar procedure" and that nothing in the language or legislative history of the HB 274 required a mandatory process.[199] Further, by making the process voluntary it could include

likened this to the old saw about the party who prevailed at the trial level, obtained a unanimous affirmance from the court of appeals, but then lost at the supreme court in a 5 to 4 vote, where the majority wrote, "Upon this result reasonable minds cannot differ."

[194] Meeting of the Texas Supreme Court Advisory Committee, 24034 (Jan. 27, 2012) (Advisory Committee); Meeting of the Texas Supreme Court Advisory Committee, supp. at 4 (Jan. 27, 2012) (Task Force Report).

[195] *See* Letter from David Chamberlain to the Hon. Nathan Hecht, *supra* note 186, at 1–2.

[196] *Id.* at 2.

[197] *See id.* The governing boards expressed their approval in the Supreme Court Advisory Committee Meeting:

> CHAIRMAN BABCOCK: "Jeff Boyd has got a question, and I'm sure others do. Before we get to that, this Texas ABOTA, David, TADC, TTLA working group, once you-all reached consensus, did you go back to your respective organizations and get them to bless this, or is basically this just the view of the signatories of the attachment to your letter to me?"
>
> MR. CHAMBERLAIN: "Yes, we—well, we did go back to our respective executive committees and boards for approval."
>
> CHAIRMAN BABCOCK: "Okay. And all three organizations approved it?"
>
> MR. CHAMBERLAIN: "Yes, sir."

Meeting of the Texas Supreme Court Advisory Committee, 23968–69 (Jan. 27, 2012); *see also* Letter from David Chamberlain to Charles L. Babcock, Chair, Texas Supreme Court Advisory Committee (Jan. 26, 2012), *available at* http://www.chmc-law.com/tlu_updates/tlu_2012/20120126_files/VoluntaryRuleLetter.pdf.

[198] Letter from David Chamberlain to the Hon. Nathan Hecht, *supra* note 186, at 2.

[199] *Id.*

features unlikely to be upheld against constitutional challenges if made mandatory.[200] For example:

> A voluntary rule allows for three additional cost-saving features which the mandatory rule cannot provide because of conflicts with the Texas Constitution and other state statutes. First, the voluntary rule provides for limited appellate remedies that are similar to those provided for the appeal of an arbitration award. Second, the voluntary rule would limit the length of the trial to five hours per side. Third, the voluntary rule provides for a jury of six, even in district court.[201]

The working group also noted several perceived deficiencies of a mandatory process including the concern of whether a cap on recovery can be mandated by rule and the unfairness of allowing a plaintiff the ability to "opt in" or "opt out" of the process while requiring a defendant to establish good cause.[202] It also pointed out that the amount in controversy does not always accurately reflect the real stake in the litigation because a seemingly minor claim could, through claim preclusion or reputational injury for example, impact other significant interests of a defendant.[203] In short, it

[200] *See* Letter from David Chamberlain to Charles L. Babcock, *supra* note 197, at 3.

[201] *Id. See also* TEX. CONST. ART. V, § 13; TEX. GOV'T CODE ANN. § 62.201 (West 2013).

[202] Meeting of the Texas Supreme Court Advisory Committee, 23962, 23964 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("[A]fter considerable deliberation the working group concluded—and I do mean unanimously—that a mandatory rule would be fundamentally unfair. . . . If the plaintiff pleads for $100,000 or less, the defendant is pretty much stuck with that. There is the good cause exception, but I'm here to submit to you that in some venues, and more than just a few, that argument for the defendant is not going to necessarily have the gravity that you think it should have, and it's not reviewable, or if it is reviewable it's going to be on appeal after the end of the case because this is not going to be something that's subject to an interlocutory appeal. So the defendant is going to be stuck with this unless within the discretion of the court the defendant should not be.").

[203] The issue of reputational injury arose at the Texas Supreme Court Advisory Committee meeting of Jan. 27, 2012:

> MR. LOW: "But would the defendant have the option of making that? I mean, defendant is just worried about saving his reputation. Plaintiff wants to really destroy that reputation. . . . [H]ow can defendant then get out of it other than good cause?"
>
> HONORABLE ALAN WALDROP: "He can't other than good cause. If the plaintiff pleads into it and the defendant really wants out, his out is good cause."

believed that the goals of HB 274 could be better achieved through a voluntary process, especially since there was no legislative mandate that the process be mandatory.[204] Finally, there was "serious concern in the working group that a mandatory expedited trial procedure will breed resistance and will be circumvented by the parties pleading around or out of it."[205]

The substance of the Working Group's report was contained in proposed Rules 262.4, Submission to the Expedited Jury Trial and 264.5, Procedure for the Expedited Jury Trial Process.[206] Its process would require the written consent of all parties and would require good cause to then remove a case from the process.[207] A party entitled to a defense or indemnity under an insurance contract or other contract for indemnity, would also need the consent of the insurer or indemnitor.[208] Trial time would be limited to five-hours per side[209] not including time spent on objections, bench conferences, and juror challenges and would be to a six-person jury, with five needed for a verdict.[210] There would be no alternate jurors and only two peremptory

Id. at 23949. Additional specific examples noted include, among others: injunctions, declaratory judgments, forcible entry and detainer, water rights, professional negligence, and defamation/business disparagement. *See, e.g.*, *id.* at 23947–48.

[204] *Id.* at 23961–62 (statement of David Chamberlain) ("[T]he working group and the task force both took a serious look at whether House Bill 274 requires a mandatory rule, and some of you may still have that question. It does not. Many of the working group members were involved in the legislative process when 274 was going through the House and when it was going into the chambers, and to a person, none of the people that were involved in the process as it was going through both chambers were aware of any discussion whatsoever about this being required to be a mandatory rule. To be sure, the Texas Association of Defense Counsel went out and paid a considerable sum of money to have all the transcripts of all the committee hearings in both chambers and the floor debate transcribed, and I have those with me here today, if anybody would like to do that. In those you will see that there is no legislative intent nor is there even any discussion that this would be a mandatory rule.").

[205] Letter from David Chamberlain to the Hon. Nathan Hecht, *supra* note 186, at 4.

[206] Letter from David Chamberlain to Charles L. Babcock, *supra* note 197, at 11–13.

[207] *Id.* at 11 (Exhibit A, proposed Rule 262.4(a)(2), (d)).

[208] *Id.* (Exhibit A, proposed Rule 262.4(b)).

[209] Meeting of the Texas Supreme Court Advisory Committee, 23957–58 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("So where did we come up with five hours? Five hours, the idea there is this trial will be completed from soup to nuts in two days. In other words, you'll go in on Monday morning, you will pick your jury, and you will be finished by Tuesday afternoon. The jury will start their—the case will be turned over to the jury late Tuesday afternoon or sooner if you can do it.").

[210] Letter from David Chamberlain to Charles L. Babcock, *supra* note 197, at 12 (Exhibit A, proposed Rule 262.5(b)).

challenges per side with the possibility of one more per party where there are more than two parties.[211] The court could not order ADR[212] or entertain or grant a motion for directed verdict.[213] As a tradeoff for limiting a plaintiff's recovery, the recommendation provided that only judicial or jury misconduct or corruption, fraud, or undue means of a party that prevented a fair trial would justify setting aside a verdict or judgment or be grounds for appeal.[214] Finally, it would not exclude application to cases arising under Chapter 74 Civil Practice & Remedies Code, the Family Code, Property Code, or the Tax Code but, instead, provide that in case of a conflict, these code provisions would control over Rule 262.[215]

D. The Supreme Court Task Force

The Supreme Court of Texas appointed a Task Force by Order of September 26, 2011, Misc. Docket No. 11-9193, as amended October 5, 2011, in Misc. Docket No. 11-9201. [216] The Task Force was to advise the

[211] *Id.*

[212] Meeting of the Texas Supreme Court Advisory Committee, 23953 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("A couple of other pieces that are worth noting, one is that the rule would provide that a court cannot order you to mediation, so it would cut out that cost, but you can still—obviously you could agree to mediate . . . .").

[213] See Letter from David Chamberlain to Charles L. Babcock, *supra* note 197, at 12 (Exhibit A, proposed Rule 262.5(c)).

[214] Meeting of the Texas Supreme Court Advisory Committee, 24011 (Jan. 27, 2012) (statement of David Chamberlain) ("This was—in the working group this was a negotiative process between all aspects of the bar. The plaintiffs[‘] bar felt very strongly about this. You know, they realize that—and they accepted the fact that they would be capped at $100,000 if they entered into this procedure, so they gave up something there. What they wanted, and I think for good reason, in return is I want it to end there. If I get my 70 grand, I don't want you taking this to the court of appeals and then I don't want you taking this to the Supreme Court of Texas. It's over with. Now, I'll give you the cap, you give me efficiency and finality. That's what the trade-off is.").

[215] *See* Letter from David Chamberlain to Charles L. Babcock, *supra* note 197, at 11–13 (Exhibit A).

[216] THE TASK FORCE FOR RULES IN EXPEDITED ACTIONS, FINAL REPORT TO THE SUPREME COURT OF TEXAS 2 (Jan. 25, 2012) (The members of the Task Force were: David Chamberlain, Esq., Austin; Lamont Jefferson, Esq., San Antonio; Denis Dennis, Esq., Odessa; Martha S. Dickie, Esq., Austin; Wayne Fisher, Esq., Houston; Jeffrey J. Hobbs, Esq., Austin; Hon. Scott Jenkins, Austin; Bradley Parker, Esq., Fort Worth; Chair: Hon. Thomas R. Phillips, Austin; Ricardo Reyna, Esq., San Antonio; Hon. Alan Waldrop, Austin; Kennon Wooten, Esq., Austin; Supreme Court Liaison: Justice Nathan Hecht; Supreme Court Rules Attorney: Marisa Secco.); Order Appointing Task Force for Rules in Expedited Actions, Misc. Docket No. 11–9193 (Tex. Sept. 26,

court regarding rules to be adopted or revised pursuant to Section 2.01 of House Bill 274 and to make final recommendations to the court by February 1, 2012.[217] Its deliberations focused on: the scope of discovery, disclosure, proof of medical expenses, time limits, expedited resolution, monetary limits, alternative dispute resolution.[218] The most discussed and contentious issue was whether the process should be mandatory or voluntary.[219] On this last issue, the task force ended up splitting the baby.[220]

The substance of the Task Force's report consisted of two alternate proposals.[221] The first consisted of Rules 168 and 169 that together would provide for both a mandatory and a voluntary rule.[222] The mandatory rule would only apply to cases in which the amount in controversy is less than $100,000.[223] The voluntary rule had no limit on the amount in controversy but, since it would apply only where agreed to, contained restrictions on juries and post-judgment remedies thought unavailable in a mandatory rule.[224] The second alternative was a stand-alone Rule 169 that is voluntary and "applies only to cases in which the both the amount in controversy is less than $100,000 and where all parties have consented to be governed by the expedited actions process."[225]

Many of the task force's recommendations from Rule 168, the mandatory version, were adopted by the court in the final rules.[226] These include:

- 180-day discovery period beginning after the date the first request for discovery of any kind is served on a party.[227]

2011) *replaced by* Order Amending Appointment of Task Force for Rules in Expedited Actions, Misc. Docket No. 11–9201 (Tex. Oct. 5, 2011) (Hon. R. Jack Cagle also appointed to the task force).

[217] *Id.*

[218] *Id.* at 2–4.

[219] *Id.* at 4.

[220] *See id.*

[221] *Id.* at 4–5.

[222] *Id.*

[223] *Id.*

[224] *Id.* at 5.

[225] *Id.* at 4–5.

[226] TEX. R. CIV. P. 169, 190.2.

[227] *Id.* 190.2(b)(1).

- A six-hour per party limit on oral depositions that could be expanded by agreement but not beyond 10 hours without leave of court.[228]
- A limitation of not more than fifteen written interrogatories, excluding those asking only to identify or authenticate specific documents,[229] fifteen written requests for production,[230] and fifteen written requests for admissions.[231] Each discrete subpart of an interrogatory, request for production, or admission would be considered a separate request for purposes of the limitations.[232]
- Required disclosure, upon request, of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses.[233] These requests would not count against the fifteen requests for production limitation.[234]
- That discovery would be reopened on removal of the action from the expedited process allowing redeposing any person and continuing the trial date if necessary to permit completion of discovery.[235]
- It defined limitations on recovery to include, "damages of any kind, penalties, costs, expenses, pre-judgment interest, attorney's fees, or any other type of monetary relief"[236] and excluding post-judgment interest.[237]
- A requirement that a claimant, on a party's written request or the court's own initiative, affirmatively plead whether the party's claim(s) seeks only monetary relief aggregating $100,000 or less.[238]

[228] *Id.* 190.2(b)(2).
[229] *Id.* 190.2(b)(3).
[230] *Id.* 190.2(b)(4).
[231] *Id.* 190.2(b)(5).
[232] *Id.* 190.2(b)(3)–(5).
[233] *Id.* 190.2(b)(6).
[234] *Id.*
[235] *Id.* 190.2(c).
[236] *Id.* 169(a)(1).
[237] *Id.* 169(b).
[238] *Id.* 169(a)(1).

- The process would not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.[239]
- A suit may be removed for good cause.[240]
- A pleading to remove a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial.[241]
- If a suit is removed from the expedited actions process, then the court must continue the trial date and reopen discovery under Rule 190.2(c).[242]
- On request, the court must set the case for trial within 90 days after the discovery period ends.[243]
- Unless requested by the party sponsoring the expert, the admissibility of that testimony may only be challenged as an objection to summary judgment evidence or during the trial on the merits.[244] This does not apply to a motion to strike for late designation.[245]
- Proof of medical expenses as "necessary and reasonable" may be by affidavit.[246]
- The areas in which the task force's proposed mandatory rules would depart from those adopted by the court include:
- The suit would be removed from the expedited process by a counterclaimant's pleading that seeks any relief other than the monetary relief allowed by (a)(1).[247]

[239] *Id.* 169(a)(2).

[240] *Id.* 169(c)(1)(A).

[241] *Id.* 169(c)(2).

[242] *Id.* 169(c)(3).

[243] *Id.* 169 (d)(2).

[244] *Id.* 169(d)(5); Meeting of the Texas Supreme Court Advisory Committee, 23953 (Jan. 27, 2012) (statement of Hon. Alan Waldrop) ("[The Task Force Rule would] eliminate pretrial Daubert-Robinson motions. You can still do them, but you do them at the time of trial so that expense is kicked down the road to the trial.").

[245] TEX. R. CIV. P. 169(d)(5).

[246] THE TASK FORCE FOR RULES IN EXPEDITED ACTIONS, *supra* note 216, supp. 25 r. 168(c)(5) (Jan. 25, 2012).

- The court could not order Alternative Dispute Resolution unless agreed to by the parties or required by contract.[248]

In summary, it is clear that the work of the Task Force relating to a mandatory process proved to be very influential to the court.

The adoption of rules by the court is reminiscent of Justice Robert Jackson's oft-cited concurrence in *Brown v. Allen*, where he wrote, "We are not final because we are infallible, but we are infallible only because we are final."[249] Whatever one's opinion of the course taken by the Texas Supreme Court in designing Texas's Expedited Civil Actions process, the court has spoken. It is hoped that the following observations will be of assistance to Texas lawyers now faced with coming to grips with it.

V. APPLICATION OF THE TEXAS EXPEDITED ACTIONS PROCESS

A. Recognition of Opportunities

We know anecdotally from discussions with Texas attorneys that many of these attorneys regard the new expedited case rules—at least initially—as something to be avoided, by pleading out of the rules or seeking leave to be removed from their effect. Yet we also predict the new rules will foster development of specialized practices devoted to the cost-efficient processing and trial of smaller cases.

In theory, expedited case rules (whether voluntary or mandatory) are designed with the hope of achieving time and cost savings by reducing discovery, accelerating trial settings, and streamlining trials.[250]

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[247] *Id.* r. 168 (b)(1)(b). *See also* Meeting of the Texas Supreme Court Advisory Committee, 23944 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("A counterclaim . . .by defendant for more than $100,000 would kick you out of this proceeding."). The Advisory Committee discussed the impact of nonmonetary claims:

> CHIP BABCOCK "Could a defendant make a nonmonetary claim for a declaratory judgment and kick it out?"
>
> HONORABLE ALAN WALDROP: "Yes. Yeah, that's the thought behind it. If you make a nonmonetary claim . . . this rule is not intended to cover it."

Id. at 23948.

[248] THE TASK FORCE FOR RULES IN EXPEDITED ACTIONS, *supra* note 216, supp. 25 r. 168(c)(3) (Jan. 25, 2012).

[249] 344 U.S. 443, 540 (1953) (Jackson, J., concurring).

[250] *See, e.g.*, TEX. GOV'T CODE ANN. § 22.004(h) (West Supp. 2012); COLO. R. CIV. P. 16.1(a)(1).

Unfortunately, the reality in many states has been disappointing because the expedited process is underutilized.[251] And because the process is underutilized and dependent on voluntary submission, firms are reluctant to invest time and resources developing the specialized handling procedures needed to make these cases truly cost-effective for attorneys and clients.[252]

In Texas, because the new rules are mandatory, firms can develop dockets of smaller cases knowing the new rules will apply. This predictability allows for the implementation of routine procedures and the development of expertise across a larger body of cases, with the potential to further reduce cost and increase the quality of results. The advantage will go to those firms that approach expedited trials systematically rather than as the occasional exception.

Another benefit exists for those firms dedicated to the litigation of larger cases. Small expedited trials offer the opportunity to increase trial experience for attorneys. The decline in civil jury trials over the last twenty-five years is well-documented[253] even though civil case filings have not decreased.[254] There are now litigation attorneys with extensive pretrial litigation expertise who have only minimal trial experience; the ABA has recently recognized this reality and approved a legal specialty board certification in Civil Pretrial Practice, in addition to Civil Trial Advocacy.[255] Mandatory expedited trial rules will allow firms to implement a docket of smaller cases suitable for development of trial experience, with limited cost exposure and with limitations on potential verdicts.

B. Pleading Considerations

For counsel deciding whether or not to plead into the new mandatory expedited case procedures (and for counsel deciding how to respond), there

[251] *See infra* Table 8.

[252] *See Evolution*, *supra* note 16, at 60–62.

[253] *See generally* Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. EMPIRICAL LEGAL STUD. 459 (2004); Mark Curriden, *Number of Civil Jury Trials Declines to New Lows in Texas*, DALL. MORNING NEWS, June 22, 2013, www.dallasnews.com/business/headlines/20130622-number-of-civil-jury-trials-declines-to-new-lows-in-texas.ece.

[254] *See* Galanter, *supra* note 253, at 461 (stating civil case dispositions have increased more than five-fold while the absolute number of dispositions by trial have actually decreased).

[255] Am. Bar Ass'n House of Delegates, *Resolution*, AM. BAR ASS'N (February 14, 2011), http://www.americanbar.org/content/dam/aba/migrated/2011_build/house_of_delegates/102_2011_my.authcheckdam.pdf (approving board certification Civil Pretrial Practice).

are primarily three new amended rules to consider: Texas Rule of Civil Procedure 169 (detailing the process), Texas Rule of Civil Procedure 47 (requiring plaintiffs to plead into or out of the process through categorization of relief sought), and Texas Rule of Civil Procedure 190 (limiting discovery).[256] Two additional amended rules supplement the expedited case process: Texas Rule of Civil Procedure 78a (revised case information sheet), and Texas Rule of Evidence 902(10)(c) (revised medical expenses affidavit).[257] (The affidavit attempts to satisfy the "paid or incurred" issue but may not do so in all cases.)[258]

Until the recent amendments, Texas Rule of Civil Procedure 47 required claimants, cross claimants, counter claimants, and third-party claimants to plead (1) a short statement of the claim to give sufficient and fair notice; (2) that the damages sought were within the jurisdiction of the court, if the

[256] TEX. R. CIV. P. 47, 169, 190. In addition, Texas Rule of Civil Procedure 78a has been amended to revise the required civil case information sheet in order to conform to the new pleading requirements of Texas Rule of Civil Procedure 47. TEX. R. CIV. P. 78a, 76 TEX. B.J. 228 (2010, amended 2013).

[257] TEX. R. CIV. P. 78a; TEX. R. EVID. 902(10)(c).

[258] Meeting of the Texas Supreme Court Advisory Committee, 23953–54 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("[W]e've put together a form affidavit to go with the rule that would provide a mechanism by affidavit to prove up medical expenses. We at first picked up the same exact language that already exists in the rules, but in looking at it we noticed that that form affidavit does not actually track the rule of evidence, and so we tweaked our affidavit a bit and were asking the Supreme Court to look at the form of the affidavit to see if they think the other one should be changed. They should be the same. There shouldn't be two different form affidavits in the rule, but which form should they follow, the one we've attached or the other one. . . . It is not designed to answer the paid or incurred question. It's designed to just get proof of medical expenses before the court, but not to presumptively answer the paid or incurred issue, which is lurking out there. That still can be fought over if the parties go out and marshal their evidence to do it."); *id.* at 24098–99 (statement of Frank Gilstrap) ("[I have a problem with the language] which says, 'In which the custodian of the records says the services provided were necessary and the amount charged for the services were reasonable.' Well, I can see how a custodian of the records can testify that the amounts charged are reasonable. I'm not sure I see how a custodian of the records, who is maybe not a doctor, can testify that the services are necessary; and under the larger question, necessary for what?"); *id.* at 24101–02 (statement of David Chamberlain) ("I don't want to cause this to blow up, but there is conflict between the Civil Practice and Remedies Code and the Haygood decision, so we had to deal with that, and we did the very best we could, understanding that there is conflict between the two. The custodian under existing law can testify as to reasonableness and necessity . . . and we tried to bring in and incorporate Haygood as best we can; but, actually, in order to get all of this resolved it's really outside our power to do so because the Legislature has to address the Civil Practice and Remedies Code when it comes to proof of medical expenses.").

claim was for unliquidated damages only; and (3) a demand for other relief sought.[259] Parties desiring more specific information obtained it through a special exception.[260]

Texas Rule of Civil Procedure 47 now requires every new petition (except in suits governed by the Family Code) to specify one of five categories for the relief sought:

1. *Only* monetary relief of $100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or
2. Monetary relief of $100,000 or less *and* non-monetary relief; or
3. Monetary relief over $100,000 but not more than $200,000; or
4. Monetary relief over $200,000 but not more than $1,000,000; or,
5. Monetary relief over $1,000,000.[261]

Texas Rule of Civil Procedure 169 mandates the applicability of the new expedited case rules to all cases pleaded as seeking relief in the first category above, but expressly exempts cases governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code.[262] If a plaintiff fails to comply with the new pleading requirements of Texas Rule of Civil Procedure 47, a defendant has the right to require compliance by asserting a special exception, and the plaintiff is barred from conducting discovery until the plaintiff's pleading is amended

[259] TEX. R. CIV. P. 47, 76 TEX. B.J. 223 (1941, amended 2013).

[260] *Id.*

[261] TEX. R. CIV. P. 47(c) (emphasis added). A comment to TEX. R. CIV. P. 47 states: "The further specificity in paragraphs 47(c)(2)–(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights." *Id.* cmt. (2013).

[262] *Id.* 169(a) cmt. 2. Although Texas Rule of Civil Procedure 47(c) only references a pleading exemption for suits governed by the Family Code, these other exemptions from the mandatory expedited trial rules are set forth in Texas Rule of Civil Procedure 169(a)(2). HB 274 requires that the expedited action process not conflict with any of these codes. Act of May 25, 2011, 82d Leg., R.S., ch. 203, § 2.01, 2011 Tex. Gen. Laws 757, 757 (codified as an amendment to TEX. GOV'T CODE ANN. § 22.004 (West Supp. 2012)). The court, following the lead of the working group, chose to simply bar use of the process in suits involving any of these codes. Meeting of the Texas Supreme Court Advisory Committee, 23999 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("[W]e didn't want to create a bunch of satellite litigation about whether or not one of the pieces of this rule is inconsistent with anything in those codes. That's such a huge broad exclusion and that there would just—if you filed a case then the case would be—the litigation of that case would be about whether you came under that process or not . . . So what we decided to do was just eliminate that debate for those codes.").

to comply.[263] In addition, the plaintiff is required to specify a discovery control plan in the first numbered paragraph of the pleading, which for expedited actions would be Level 1.[264]

1. Consideration of One-Sided Limitation on Recovery

A plaintiff who pleads into the expedited case process will be limited to a maximum recovery of $100,000, even if the jury were to return a verdict for more than that amount.[265] A defendant who files a counterclaim for more than $100,000 is not subject to the same limitation.[266] Although it is possible for a plaintiff to amend the petition to plead out of the mandatory process, any such amendment must be filed by the earlier of 30 days after the end of the discovery period or 30 days before trial; after that date, amendment may only be done with leave of court, to be granted only if good cause is shown that outweighs any prejudice to an opponent.[267]

A case for breach of contract, or any case for which attorney fees are recoverable by the prevailing party, highlights the potential effect of a one-sided cap of $100,000 for recovery by the plaintiff.[268] Even if the actual damages are clearly less than $100,000, the verdict limitation set forth in Texas Rule of Civil Procedure 169(a)(1) constricts "damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees."[269] This means that, in an expedited case, a ceiling exists on recovery of attorney fees by a prevailing plaintiff but not by a prevailing defendant, which may

[263] TEX. R. CIV. P. 47(d). A defendant who receives a discovery request from a noncomplying claimant should not ignore the request and risk waiving available objections nor should he ignore Texas Rule of Civil Procedure 47 by replying substantively. *Id.* Rather, the defendant should respond with an objection reciting the claimant's failure to comply with the requirements of Texas Rule of Civil Procedure 47 and seek a ruling and order from the trial court. *Id.*

[264] *Id.* 190.1 (requiring designation of discovery level in the first numbered paragraph); *id.* 190.2 (making Level 1 discovery applicable to expedited actions).

[265] *Id.* 169(b). *See id.* 169 cmt. 4 (2013).

[266] *See id.* 169(a)(1) & cmt. 4 (2013). The *Greenhalgh* rule should still be available to non-complying claimants since the case has not been "pleaded into" the expedited actions rule and counterclaimants can continue to rely on *Greenhalgh* even if the case is filed and tried as an expedited action. Greenhalgh v. Serv. Lloyds Ins. Co., 787 S.W.2d 938 (Tex. 1990).

[267] TEX. R. CIV. P. 169(c)(2).

[268] *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 38.001 (West 2008).

[269] TEX. R. CIV. P. 169(a)(1).

have an effect on settlement leverage as attorney fees continue to climb for both sides in a litigated case.[270]

Note, however, that recovery for plaintiffs is limited on a per-claimant rather than a per-side basis, meaning that a defendant may face a judgment exceeding $100,000 when faced with multiple claimants.[271] The court's ultimate decision to limit recovery on a per-claimant and not a per-side basis found support from the working group[272] but was contrary to the recommendation of the Task Force.[273]

Depending on the facts of the case and on the amount of a defendant's insurance coverage, this limitation on recovery may also prevent any prospect for a *Stowers* demand and its effect on settlement negotiations.[274] For example, if a defendant has $100,000 of insurance coverage, an expedited case eliminates any possibility of a verdict in excess of policy

[270] In this scenario, the plaintiff would have the right to amend the petition (if filed by the earlier of 30 days after the end of the discovery period or 30 days before trial) to seek total monetary relief in excess of $100,000, and thereby remove the case from the expedited action process, but the result would be to reopen discovery, including the retaking of depositions, further increasing costs. *Id.* 169(c)(2).

[271] *Id.* 169(b). Although the language of Texas Rule of Civil Procedure 169(a) could possibly be read to limit all claimants together to an aggregate total of $100,000 ("The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating $100,000 or less . . . ."), comment 3 to Rule 169 does not support that interpretation since it instructs courts, in determining whether good cause exists to remove a case from the expedited action process, to consider "whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1)." *Id.* 169(a) cmt. 3.

[272] Meeting of the Texas Supreme Court Advisory Committee, 24048–49 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("Where [the working group] eventually got on the task force was that really we thought the idea was as between these two parties it would be 100,000-dollar cap, and if there were multiple parties in a case that made it more, that that didn't necessarily mean that we needed to pull out of this process. That's where we came out, that's the intent of this rule, and it's a policy difference that reasonable minds can differ on. . . . It's a judgment for each person that is limited to the $100,000.").

[273] *Id.* 24112–13 (Jan. 28, 2012) (statement of David Chamberlain) ("The task force intended for—and there was discussion about this yesterday, and, Bill, I think maybe you were the one that was talking about it, but the task force intended that there could not be a judgment recovered against a defendant in excess of $100,000. . . . [T]he most that could be recovered against a defendant by all claimants was $100,000, so if each claimant pled—let's say you had three claimants and each pled $70,000. That would not fall under the expedited actions rule.").

[274] *See* Phillips v. Bramlett, 56 Tex. Sup. Ct. J. 635, 2013 WL 2664056, at *13 n.5 (Tex. June 7, 2013) (discussing *Stowers* demand); Am. Physicians Ins. Exch. v. Garcia, 876 S.W.2d 842, 848–49 (Tex. 1994).

limits, and thus any *Stowers* demand.[275] (In most cases, however, where insurance coverage is either significantly less than or significantly more than $100,000, pleading into the expedited case process will not change the existence or non-existence of a possible *Stowers* demand.)[276]

2. Consideration for Obtaining Written Informed Consent of Client

In light of these restrictions, before pleading into the mandatory expedited case rules, plaintiff counsel should discuss potential restrictions with clients, and may want to institute a procedure for obtaining the written informed consent of clients. The written informed consent might include the following wording (to be modified as appropriate):

> I have consulted with *[Attorney]* regarding my case, which I have generally described as follows: *[general description]*. Based on this description, I understand that potential categories of damages in this case include *[list potential elements of recovery for particular kind of case]*. I have authorized *[Attorney]* to seek recovery of an appropriate amount of damages for me in my case, with the understanding that the total amount to be sought for all damages combined will not exceed a maximum of $100,000 (one hundred thousand dollars), and may be substantially less than that amount depending upon the facts of my case. I authorize *[Attorney]* to inform the court and all parties in my case that I am not seeking more than $100,000 for all damages combined, including penalties, costs, expenses, pre-judgment interest, and attorney fees, in order to bring my case within the Texas expedited case process which has been explained to me. **I understand that, by specifying that my total damages are subject to this maximum cap, I will not be seeking or able to accept a verdict in excess of a maximum of $100,000 (although it is possible for a defendant to seek more than that amount from me in a counterclaim)**. I hereby

[275] Am. Physicians Ins. Exch., 876 S.W.2d at 849 (listing potential exposure to a judgment in excess of the insurance policy as a prerequisite to a *Stowers* demand).

[276] *Id.*

> specifically instruct *[Attorney]* to seek damages in an appropriate amount not to exceed a combined total of $100,000 and to make my case subject to the Texas expedited case process.

3. Consideration of Effect of Pleading on Court Subject Matter Jurisdiction

Plaintiff counsel should also be aware that by limiting the pleaded damages amount, there may be increased options for choosing the court in which to file the case. Many Texas counties have county courts at law with subject matter jurisdiction concurrent with that of district courts for amounts in controversy of $200,000 or less.[277]

If the possibility exists for a counterclaim significantly larger than the original claim, also consider the effect of filing in a court of limited jurisdiction (i.e., a county court-at-law with jurisdiction limited to $200,000 in controversy). A court of limited jurisdiction does not have subject matter jurisdiction for an individual counterclaim exceeding the court's statutory maximum, meaning that the counterclaim would have to be filed as a separate case (in a different court with greater jurisdiction) and would not be subject to the expedited trial rules.[278] Depending on the context of the specific case, this may be either a positive or a negative factor.[279]

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[277] TEX. GOV'T CODE ANN. § 25.003(c)(1) (West Supp. 2012). Note that the expedited case rules do not apply to justice court cases (involving amounts in controversy of $10,000 or less). *Id.* § 22.004(h) (specifying that the new expedited case rules are to apply to "civil actions in district courts, county courts at law, and statutory probate courts . . . ."). And the new justice court rules effective August 31, 2013 exempt justice court cases from the Texas Rules of Civil Procedure other than those set forth in Texas Rules of Civil Procedure 500-510. *See* TEX. R. CIV. P. 500.3(e). The rules applicable to justice court cases already impose shorter times for trial settings and limit discovery even more than the new expedited trial rules. *See id.* 500.9, 503.3.

[278] Smith v. Clary Corp., 917 S.W.2d 796, 798 (Tex. 1996) (explaining counterclaim not within jurisdiction of county court at law when amount in controversy exceeds maximum jurisdictional limit of court). *See also* TEX. CIV. PRAC. & REM. CODE ANN. § 31.004 (West 2008) (stating judgment in county court at law not res judicata except for issues actually litigated).

[279] In some situations in which a substantial counterclaim (for more than $200,000) arising out of the same transaction or occurrence is contemplated, plaintiff counsel may prefer to litigate all claims, including the counterclaim, in the same case. (This is often the case when the plaintiff knows litigation is inevitable and is filing first in order to choose venue.) In this circumstance, the case should be filed in a court not subject to a maximum jurisdictional limit of $200,000 (a district court). TEX. GOV'T CODE ANN. § 25.003(c)(1) (West Supp. 2012). Conversely, plaintiff counsel may prefer for a large counterclaim to be litigated in a separate case with more extensive

4. Consideration of Potential Effect on Federal Removal Jurisdiction

Plaintiff attorneys who are inclined to plead out of the expedited case process (by alleging a claim for monetary relief of more than $100,000) need to consider whether federal diversity jurisdiction exists. If so, by specifying the amount in controversy as required by Texas Rule of Civil Procedure 47(c), the same pleading which defeats application of the expedited case process can also trigger removal to federal court.[280]

5. Consideration of Possible Issue Preclusion

The possibility of issue preclusion (or "collateral estoppel") may be a consideration for either plaintiff or defense counsel. Is there the possibility that an issue litigated in an expedited case could provide the basis for issue preclusion in another case involving larger stakes?[281] Offensive use of issue preclusion may arise when a subsequent plaintiff seeks to preclude a defendant from relitigating an issue, which the defendant lost in a suit involving another party.[282] Defensive use of issue preclusion is claimed when a plaintiff has previously litigated and lost an issue against another defendant.[283] A party fearing issue preclusion as a result of an expedited trial verdict may want to seek removal of the case from the expedited case process asserting as good cause the danger of issue preclusion without a full and fair opportunity to litigate the issue due to limits on discovery.[284]

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discovery allowed, in which event the choice may be to file the original claim as an expedited case in a court of limited jurisdiction (i.e. a county court at law with a maximum jurisdictional limit of $200,000). Of course, in this latter situation, defense counsel may file a "good cause" motion to remove the original case from the expedited case process, although that will not result in dismissal of the original case from the county court at law and will not resolve the issue of having two parallel cases pending in two different courts. TEX. R. CIV. P. 169(c)(1).

[280] 28 U.S.C. § 1332(a) (2006) (granting original federal jurisdiction for civil actions where the matter in controversy exceeds the sum or value of $75,000 and involves a diversity of parties); 28 U.S.C. § 1441 (Supp. 2011) (allowing removal to federal court for cases meeting the requirements of 28 U.S.C. § 1332).

[281] *See, e.g.*, Barnes v. UPS, Inc., 395 S.W.3d 165, 174 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (discussing issue preclusion generally).

[282] Yarbrough's Dirt Pit, Inc. v. Turner, 65 S.W.3d 201, 216 (Tex. App.—Beaumont 2001, no pet.).

[283] *Id.*

[284] *See* discussion *infra* Part VI.C. (explaining that even if a motion to remove a case from the expedited action process is unsuccessful, by making the motion a party is potentially preserving

C. Considerations for Defense Counsel Specifically

What are other potential pleading considerations for defense counsel (or for any other counsel responding to a counterclaim, cross-claim, or third-party claim) at the outset of the case?

First, has the plaintiff (or other pleader) complied with Texas Rule of Civil Procedure 47, specifying by category the amount of damages being sought or the request for other relief?[285] If not, respond with a special exception pointing out the defect in pleading, which has the effect of staying discovery by the plaintiff (or other pleader) until the defective pleading is brought into compliance with Rule 47.[286] Suggested language would be similar to that used in a special exception seeking to confirm whether a dispute is within the jurisdictional limits of the court, for example:

> *[Specially excepting party]* specially excepts to the *[Original Petition / Counterclaim / Cross-Claim / Third-Party Claim]* because this pleading fails to comply with Tex. R. Civ. Proc. 47 which requires the pleader to identify the amount and type of damages being sought. *[Specially excepting party]* requests that *[opposing party]* comply with Tex. R. Civ. Proc. 47(c) and amend the pleading to identify the amount and types of damages being sought. *[Specially excepting party]* requests that this special exception be set for hearing and that the special exception be granted, and further requests that *[opposing party]* not conduct any discovery until the defective pleading is amended to comply with Tex. R. Civ. Proc. 47.

In addition, if the non-compliant pleader has propounded discovery requests, make timely written objection to the discovery based on the pleader's failure to comply with Texas Rule of Civil Procedure 47, specifically referencing the last sentence of Rule 47.

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the argument that the expedited case has not presented a full and fair opportunity to litigate the issue).

[285] *See* TEX. R. CIV. P. 47(c) (requiring identification of one of five categories for damages and other relief, is applicable to both liquidated and unliquidated damages). The prior version of Texas Rule of Civil Procedure 47 referenced only unliquidated damages. TEX. R. CIV. P. 47, 76 TEX. B.J. 223 (1941, amended 2013).

[286] Hubler v. City of Corpus Christi, 564 S.W.2d 816, 820 (Tex. Civ. App—Corpus Christi 1978, writ ref'd n.r.e.).

Potential motions specific to the expedited action process are discussed below, but one consideration should be raised here. If defense counsel believes the case should not be subject to the restrictions of the expedited action process, a motion to remove the case from the expedited process should be asserted earlier rather than later. Presumably a court will be more inclined to grant a "motion to remove for good cause" if it is filed and heard as soon as the grounds for it become clear, rather than waiting and allowing an opponent to prepare for trial in reliance upon the expedited case process, only to have discovery reopened later.[287] Since "good cause" requires an evidentiary showing, the factual portions of the motion should be verified or supported by one or more affidavits.[288]

D. Discovery Considerations

A primary motivation for enactment of rules for expedited actions is "the need for lowering discovery costs."[289] House Bill 274 specifically mandated that the Supreme Court adopt rules to "address the need for lowering discovery costs in these actions and the procedure for ensuring that these actions will be expedited in the civil justice system."[290] To accomplish this, the expedited case rules limit the time for discovery, limit the depositions that can be taken, and limit written discovery.[291] Attorneys in expedited cases must understand these limits and how to maximize the discovery that is available.

1. The Discovery Period

The expedited case process allows approximately six months for discovery.[292] The applicable discovery period (labeled as Level 1) "begins when the case is filed and continues until 180 days after the date the first request for discovery of any kind is served on a party."[293] A plaintiff who

[287] *See* TEX. R. CIV. P. 169 cmt. 3.

[288] TEX. GOV'T CODE ANN. § 312.011(1) (West 2013).

[289] Act of May 25, 2011, 82d Leg., R.S., ch. 203, § 2.01, 2011 Tex. Gen. Laws 757, 757 (codified as an amendment to TEX. GOV'T CODE ANN. § 22.004 (West Supp. 2012).

[290] *Id.*

[291] TEX. R. CIV. P. 190.2(b).

[292] *Id.* 190.2(b)(1).

[293] *Id.* (including "request for discovery of any kind" in deposition notice; this six-month time period is shorter than the nine-month time period employed in Level 2 discovery, and it starts more quickly). *See id.* 190.3 (stating the Level 2 deadline does not commence until the first *due*

seeks to expedite the process as rapidly as possible will presumably want to serve a request for disclosure or another discovery request with service of the petition, so as to start the clock ticking from the outset.[294] Likewise, defense counsel must be aware that, by the time of filing an answer in the case, a portion of the 180-day time for discovery could have already elapsed.[295] The remaining time could be even less for a later-served additional defendant or third-party defendant.[296] Defense counsel, however, does have an opportunity to seize the initiative when written discovery is served with the petition, by immediately responding with written discovery requests to the plaintiff and forcing the plaintiff to answer discovery first.[297] The plaintiff will have only 30 days to respond while the defense, for discovery served before the answer date in the case, will be allowed 50 days to respond.[298]

2. Modifications to Permissible Discovery

Level 1 discovery imposes significant restrictions (and one expansion) to discovery in order to limit investment of time and cost in the case:[299]

- **Oral Depositions.** Each party is allowed six hours in total during discovery to examine and cross-examine all witnesses.[300] The total can be expanded to ten hours per party by agreement. Any additional time beyond that requires a court order, which the court may grant "so that no party is given unfair advantage."[301] This restriction on expansion of the time by

date of written discovery or the *taking* of the first deposition (unless shortened by an early trial date)).

[294] *Id.* 190.2(b)(1). Note that when written discovery requests are served before the answer is due, respondents have 50 instead of 30 days to respond. *See id.* 194.3(a) (requests for disclosure); *id.* 196.2(a) (requests for production); *id.* 197.2(a) (interrogatories); *id.* 198.2(a) (requests for admission). This extended time to answer, however, would not extend the total discovery period. *Id.* 190.2(b)(1).

[295] *See id.* 190.2(b).

[296] *Id.*

[297] *Id.*

[298] *Id.*

[299] *Id.*

[300] *Id.* 190.2(b)(2).

[301] *Id.* (allowing six hours *per party*, rather than using the "per side" language of Tex. R. Civ. P. 169(d)(3)). In a case with multiple plaintiffs or multiple defendants it would be possible for one side to gain an unfair advantage through multiplication of that side's deposition time. Presumably

agreement presumably exists to prevent counsel from defeating the cost-saving intent of the rule. These significant time restraints on deposition will tend to favor the attorney who knows how to take highly efficient and targeted depositions.

- **Interrogatories, Requests for Production, and Requests for Admission.** Each party is restricted to serving no more than 15 interrogatories, 15 requests for production, and 15 requests for admission on another party, with discrete subparts counted separately.[302] An exception to these restrictions is made for interrogatories asking a party only to identify or authenticate specific documents.[303] Although interrogatories and requests for admission may only be directed to parties, requests for production may be directed to non-parties,[304] and no restriction is stated in Texas Rule of Civil Procedure 190.2 for the number of requests for production which may be directed to non-parties.[305]
- **Requests for Disclosure.** This is the one discovery tool that has actually been broadened under the expedited action rules.[306] In addition to the content subject to disclosure under Texas Rule of Civil Procedure 194.2, a party may request disclosure of "all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses."[307] A request for disclosure made pursuant to this paragraph is not considered a request for production.[308] (This labeling not only prevents the request from counting against the limit of 15 requests for production, it also presumably invokes all of the authority of

other facts could also be shown in a given case as to why more deposition time is needed "so that no party is given unfair advantage." *Id.*

[302] *Id.* 190.2(b)(3)–(5).

[303] *Id.* 190.2(b)(3).

[304] *Id.* 205.1.

[305] *Id.* 190.2(b)(4); *id.* 205.3(f) (stating that parties are responsible for paying the reasonable costs of production incurred by non-parties).

[306] *Id.* 190.2(b)(6).

[307] *Id.* This language is modeled directly upon the language of Federal Rule of Civil Procedure 26(a)(1)(A)(ii), although, unlike the federal counterpart, the Texas rule requires the request to be made rather than treating the disclosure obligation as automatic.

[308] TEX. R. CIV. P. 190.2(b)(6).

Texas Rule of Civil Procedure 194, such as eliminating any protective assertion of work product.[309]) This new request for disclosure is a boon to simplifying discovery.[310] Presumably, plaintiffs will want to serve a request for disclosure – with this new language added – with the petition, and defendants will want to respond with the same request for disclosure immediately upon the filing of their answer. Since interrogatories, requests for production, and requests for admission are limited to 15 of each, it may be wise for counsel to refrain from using the full complement of these other discovery requests until responses to requests for disclosure have been reviewed, but counsel must also be mindful of the expiring time for discovery.

- **Other Forms of Discovery.** No modification has been made under the expedited action rules to the other forms of formal discovery, such as pre-suit depositions[311] and motions for physical or mental examination.[312]

3. New Discovery Motions Created by the Expedited Action Rules

Traditionally, for cases *not* governed by the new expedited action process, Texas Rule of Civil Procedure 190.5 requires the court to grant a motion to reopen discovery whenever a pleading amendment or a supplemental discovery response is made so close to the discovery deadline that there is no opportunity to conduct discovery regarding the new material and the adverse party would be unfairly prejudiced without additional discovery.[313] This mandatory rule states an exception for expedited cases

[309] *Id.* 194.5.

[310] Meeting of the Texas Supreme Court Advisory Committee, 23950 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("[P]robably the most significant change to the discovery piece is that it's really designed to rely on the disclosure mechanism for this, and what was added to the disclosure piece of this is we picked up and added to this a requirement to disclose documents much like the Federal requirement on disclosure documents . . . .").

[311] TEX. R. CIV. P. 190.2(b) (excluding pre-suit depositions, as defined in Texas Rule of Civil Procedure 202.1, from the time allowed for taking depositions, provided they aren't used to circumvent that rule, as illustrated in Texas Rule of Civil Procedure 190.6).

[312] *Id.* (providing no limitation in the expedited action rule for compelling a party to submit to an examination in accordance with Texas Rule of Civil Procedure 204.1).

[313] *Id.* 190.5(a).

("[u]nless a suit is governed by the expedited actions process in Rule 169 . . .").[314] However, the comment to Texas Rule of Civil Procedure 190.5 states, "Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met."[315]

The court *must* reopen discovery pursuant to Texas Rule of Civil Procedure 190.2(c) if the case is removed from the expedited actions process based on a pleading amendment or by court order in response to a motion for good cause, so that the case may be conducted with Level 2 or Level 3 discovery rather than Level 1.[316] Any person previously deposed may be redeposed (since the severe time constraints of Level 1 are no longer applicable).[317] This additional discovery must be allowed even if it is necessary to continue the trial date.[318]

As a result, three types of motions affecting discovery are specifically authorized or referenced under the new expedited action rules and comments:

- Motion to reopen discovery after removal of case from expedited action process, to be granted as a matter of right pursuant to Texas Rule of Civil Procedure 190.2(c).[319]
- Motion to enlarge time for depositions, to be granted in the discretion of the court pursuant to Texas Rule of Civil Procedure 190.2(b)(2).[320]
- Motion for additional discovery based on late amendment of pleadings or supplementation of discovery, to be granted in the discretion of the court pursuant to Texas Rule of Civil Procedure 190.5(a) and the accompanying comment to the rule.[321]

[314] *Id.*

[315] *Id.* 190.5 cmt. (2013).

[316] *Id.* 169(c)(3), 190.2(c).

[317] *Id.* 190.2(c).

[318] *Id.*

[319] *Id.*

[320] *Id.* 190.2(b)(2); *see* discussion *supra* Part V.D.2. (discussing oral depositions).

[321] TEX. R. CIV. P. 190.5(a).

4. Timing of Expert Designations in Discovery

The new expedited action rules do not alter the stated time periods for designation of experts provided by Texas Rule of Civil Procedure 195, but the shortened Level 1 schedule does effectively alter how quickly the parties will need to be prepared to make expert designations.[322]

According to Texas Rule of Civil Procedure 195.2, experts are to be designated according to the following schedule unless otherwise ordered by the court:

- with regard to all experts testifying for a party seeking affirmative relief, 90 days before the end of the discovery period;
- with regard to all other experts, 60 days before the end of the discovery period.[323]

The Level 1 discovery period expires 180 days after the first discovery request is served; therefore the plaintiff's expert designation deadline in an expedited case occurs only 90 days after the first service of a discovery request.[324] In addition, pursuant to Texas Rule of Civil Procedure 195.3, the plaintiff will also need to produce an expert report for a retained expert or be prepared to produce the expert within 15 days after designation.[325]

5. Timing of Discovery Supplementation

The new expedited action rules also do nothing to alter the stated time periods for the supplementation of discovery provided by Texas Rule of Civil Procedure 193.5.[326] Parties still have a duty to amend or supplement discovery reasonably promptly after discovering the necessity for such a response.[327] An amended or supplemental response made less than 30 days before trial is presumed to be untimely.[328]

A failure to timely amend or supplement discovery results in exclusion of the evidence unless there is good cause for the late disclosure or it does

[322] *Id.* 190.2(b).
[323] *Id.* 195.2.
[324] *Id.* 190.2(b).
[325] *Id.* 195.3.
[326] *Id.* 190.2(b).
[327] *Id.* 195.3.
[328] *Id.*

not unfairly surprise or prejudice the opponent.[329] If allowed, the court may—but is not required to—reopen discovery.[330]

6. Recommendations for Conduct of Limited Discovery

The limits on discovery in expedited cases necessitate careful planning to maximize the ability to present the case well within the time-constraints of trial. In 1857, Henry David Thoreau commented on story length: "Not that the story need be long, but it will take a long while to make it short."[331] Thorough presentation of the trial story with brevity demands preparation.

Since both discovery and trial time are limited, wise conduct of depositions is crucial. Edited video depositions will take on increased importance at trial, for both supporting and adverse witnesses, because edited video depositions will allow maximum control of the information being presented and of the time it will take to do it. This means that all depositions should be videotaped.

In addition, in most cases, counsel will need to dispense with the luxury of taking purely exploratory "discovery" depositions. Almost every deposition must be approached with the likelihood or at least potential that the witness will be called at trial by video deposition only, and therefore counsel must be prepared to conduct a proper direct[332] or cross examination.[333] This in turn places a premium on developing the art of a blind cross-examination, traditionally the staple of successful criminal defense attorneys.

Endeavor to schedule depositions early and by agreement. Agreed dates for deposition can be set at the outset of the case, even before all deponents are identified, with the agreement to alternate deponents.[334]

Agree that all deposition exhibits will simply be numbered sequentially without reference in the exhibit label to the identity of the deponent or the

[329] *Id.* 193.6(a).

[330] *Id.* 190.5(a) cmt. (2013).

[331] Letter from Henry David Thoreau to Mr. B (Nov. 6, 1857), *in* HENRY DAVID THOREAU, LETTERS TO VARIOUS PERSONS, 165 (1879), *available at* http://catalog.hathitrust.org/Record/001775540.

[332] *See* JIM WREN, PROVING DAMAGES TO THE JURY, 296–297 (2011) (providing guidance to plaintiffs on conducting short, effective video depositions of clients and supportive witnesses).

[333] *Id.* at 299–305 (providing guidance to plaintiffs on conducting effective video depositions of opposing parties and witnesses for use in a trial).

[334] TEX. R. CIV. P. 199.2(a).

side introducing the exhibit (i.e. starting with Exh. No. 1, etc., in the first deposition and then picking up in the next deposition with the next number in the sequence). Agree the same numbers will be used through trial for the sake of simplification.

Work to resolve all discovery disputes by agreement. Discovery fights waste time and money. Judges hate them, and better results can usually be obtained by agreement, except for the rare issue that is outcome-determinative.

E. Trial Settings

The Supreme Court Advisory Committee was well-aware of the impact of an early trial on the reduction of discovery costs.[335] The new expedited case rules provide a framework to get cases tried within less than a year from filing, even after continuances.[336]

Texas Rule of Civil Procedure 169 specifies that "[o]n any party's request, the court must set the case for a trial date that is within 90 days after the [end of the] discovery period."[337] Presumably either party could secure a future trial setting at the outset of the case, provided the request is made in compliance with any appropriate requirements set forth by local rules. Of course, a setting does not guarantee the case will be reached for trial,[338] but the rule also purports to limit the court's discretion to grant

[335] Meeting of the Texas Supreme Court Advisory Committee, 24002 (Jan. 27, 2012) (discussing federal litigation empirical study documenting the cost-reduction effect of an early trial setting).

[336] *Id.* at 24085.

[337] TEX. R. CIV. P. 169(d)(2). The party's request for a trial setting would still need to comply with Texas Rule of Civil Procedure 245, requiring notice of at least 45 days prior to a first trial setting. *Id.*

[338] Meeting of the Texas Supreme Court Advisory Committee, 24167 (Jan. 28, 2012) (statement of the Hon. R. H. Wallace) ("Now, here's another problem. Everybody has their own docket control systems and all of that. In Tarrant County the old cases go to the top, so even if you set one of these cases within six months it's going to be probably the last case on the docket. So how does the trial judge know to try to get that case set? Do we want to get it some type of—I shudder, but, you know, say you give these cases preferential treatment? It's just something—otherwise they're not going to get to trial a lot faster, I don't think."); Meeting of the Texas Supreme Court Advisory Committee, 23951–52 (Jan. 27, 2012) (statement of the Hon. Alan Waldrop) ("At the end of the day the committee or the task force opted to have as part of the rule a mandate that if a party requests it the trial court is supposed to set a trial within 90 days of the close of discovery. Now, what we what the task force did not propose was what happens if the court declines to do that, and so there's not a remedy built into the rule that suggests something is

continuances: "The court may continue the case twice, not to exceed a total of 60 days."[339]

This rule provides either party with the tool to force the case to trial.[340] Local rules in some counties require submission to alternative dispute resolution as a condition for trial[341] (not to be confused with a condition for *setting* the case for trial), but Texas Rule of Civil Procedure 169(d)(4) limits how much investment of time and cost in ADR may be ordered by the court.[342] Additionally, an ADR requirement should not interfere with at least getting the case set for trial; a local rule may not be used to alter the time periods provided by Texas Rule of Civil Procedure 169,[343] nor may

going to happen if that doesn't happen."); *id.* at 24084 (statement of Richard Orsinger) ("Okay. On (c)(2), on the trial setting, I've calculated this, and I think the quickest this could be is if the plaintiff serves the defendant with discovery, and so there's a six-month clock that starts on the day the discovery is served, and then the trial judge must set the case within the following 90 days, so that's a nine-month trial setting after the defendant is served, but that there's no requirement that the court actually try the case, so they can reset it a dozen times, and the case will drag out two years, and what the plaintiff is bargaining for, a quick resolution, is gone. Now, we just went through the process on the termination cases of setting outside limits on the number of extensions. What about saying that the trial courts must dispose of these cases within 12 months?").

[339] TEX. R. CIV. P. 169(d)(2); *id.* 245 (resetting of a trial date simply requires "reasonable notice").

[340] *Id.* 169(d)(2).

[341] Meeting of the Texas Supreme Court Advisory Committee, 24041–42 (Jan. 27, 2012) (statement of Michael Schless) (criticizing the Working Group's recommendation against court ordered ADR, Professor Schless offered these comments: "Well, let me explain my heartburn. Under if the language is as provided in the 24 two Rule 169s, a lot of the heartburn of the ADR community—and perhaps I should explain. I'm a former chair of the ADR section of the State Bar. We had two other former chairs who had to leave and Don Philbin is a member of the current ADR section counsel, so we're trying to represent the interests of the ADR community, but more broadly speaking, we're trying to understand the proper place of ADR within this rule. Our heartburn under the ABOTA draft was that it would lead to the anomaly of the Court adopting a rule that says a court must not exercise the discretion that a statute gives that judge, which is the court on its own motion or on motion of either party may order the parties to an ADR procedure.")

[342] TEX. R. CIV. P. 169(d)(4) (permitting the court to order ADR one time, unless the parties have agreed otherwise). However, a court-ordered procedure is limited to a single ADR process of not more than a half-day in duration and at a cost not more than twice the amount of applicable civil filing fees. *Id.* Court-ordered ADR must be completed no later than 60 days before the initial trial setting. *Id.* Finally, the rule requires the court to consider objections to an ADR referral unless prohibited by statute. *Id.* The parties, on the other hand, may agree to engage in any type of ADR. This seemingly would allow a lengthier, more costly ADR process not bound by the one time or sixty-day restrictions.

[343] *Id.* 3a(2).

any additional representation concerning the completion of pretrial proceedings (presumably including prior completion of ADR before obtaining a trial setting) be required as a condition for obtaining the trial setting.[344]

VI. PRETRIAL CONSIDERATIONS

A. Challenges to Expert Testimony

Battles over the admissibility of expert testimony (in the form of "*Daubert*/*Robinson* motions")[345] often drive up pretrial litigation costs. The expedited action process takes aim at this cost by limiting the form of challenges to expert testimony.[346] Before trial, unless the party sponsoring the expert requests otherwise, the only way to challenge the admissibility of expert testimony (other than for late designation)[347] is by means of an objection to summary judgment evidence.[348]

As a practical matter, this means that a party desiring to challenge an opposing expert before trial will typically need to file a traditional or no-evidence motion for summary judgment on an issue requiring expert testimony, as a means of forcing an opponent to provide an expert affidavit.[349] Once the expert affidavit is on file, an objection to the expert testimony may be lodged, raising issues which would otherwise be asserted in a *Daubert*/*Robinson* motion.[350] However, the potentially short timelines for discovery, expert designation, and a trial setting may preclude squeezing in a Texas Rule of Civil Procedure 166a motion for summary judgment.[351]

Generally, the failure to challenge expert testimony before trial does not preclude a party from asserting a challenge to admissibility of the testimony during trial, subject to one exception.[352] Since Texas Rule of Civil

[344] *Id.* 245.

[345] *See* Merrell Dow Pharm., Inc. v. Havner, 953 S.W.2d 706, 712, 720 (Tex. 1997); *See generally* Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993).

[346] TEX. R. CIV. P. 169(d)(5).

[347] *Id.* 193.6.

[348] *Id.* 169(d)(5).

[349] *See id.* 166a.

[350] *See Havner*, 953 S.W.2d at 712, 720; *See generally Daubert*, 509 U.S. 579 (1993).

[351] *See* TEX. R. CIV. P. 169(d).

[352] *Id.* 169(d)(5) (specifically anticipating the possibility of an objection being raised "during the trial on the merits" absent a request from the party sponsoring the expert for a pretrial challenge).

Procedure 169(d)(5) acknowledges the potential for the party who is sponsoring the expert to request a pretrial challenge, it follows that a court could include a deadline for expert challenges in a pretrial scheduling order, and thereby preclude expert challenges being raised for the first time during trial.[353] Conversely, if the party sponsoring an expert does *not* request pretrial consideration of an expert challenge, any pretrial challenge filed (other than an objection to summary judgment evidence) should automatically be continued until trial.[354] With regard to the charging of time for a challenge asserted during trial, Texas Rule of Civil Procedure 169(d)(3)(B) excludes time spent on "objections," which would appear to cover the making of an objection to the admissibility of expert testimony.[355]

In some cases, it may be wise for the party sponsoring the expert to choose to request a pretrial deadline for expert challenges, both to eliminate a trial risk and to save trial time (by streamlining the presentation of trial testimony about the expert's qualifications and relevance/reliability of opinions).

B. Pretrial Motions

A lawyer or firm dedicated to trying expedited cases will need a basic set of motions and proposed stipulations to preserve and maximize limited trial time. A good working list might include:

- Pretrial Scheduling Order (preferably agreed, presented by motion if necessary), including requirements and dates for:
  - Deadline for designation of responsible third parties
  - Deadline for joinder of parties
  - Expert designation deadlines
  - Pleadings deadline
  - Dispositive motion deadline (and possibly a deadline for expert challenges)[356]
  - List of trial witnesses
  - Exhibit list of premarked trial exhibits to be tendered for preadmission
  - List of objections to deposition designations

[353] *Id.*

[354] *Id.*

[355] *Id.* 169(d)(3)(B).

[356] *See* discussion *supra* Part VI.A.

  - Designation by line and page of deposition excerpts to be presented to the jury
  - Final pretrial conference with the court
  - Trial
- Stipulation to authentication and admissibility of evidence[357]
- Stipulation regarding trial witnesses and expert witnesses
- Stipulation for joint sharing of use and cost of supplemental audio-visual equipment for the courtroom
- Possible stipulation limiting entitlement to discovery of communications between opposing counsel and retained expert witnesses or to drafts of experts' reports[358]
- Motion for good cause removal or exception from expedited trial rules (including by agreement)[359]
- Motion to adjust or equalize trial time between sides[360]
- Motion to equalize peremptory strikes (in multiparty case)
- Motion for supplemental jury questionnaire
- Motion in limine
- Motion to exclude evidence
- Motion to admit evidence
- Motion for leave to amend pleadings[361]

C. Good Cause Motions

Discovery motions specific to the expedited action process have already been discussed.[362] There are three other potential motions specific to the

[357] TEX. R. CIV. P. 193.7 (Discussing the authentication of documents by a producing party after notice of designation for use in trial).

[358] This recommendation is a cost-saving measure which tracks the new work product protection accorded to communications between counsel and retained experts in federal litigation. *See* FED. R. CIV. P. 26(b)(4).

[359] *See* discussion *infra* Part VI.C.

[360] *See* discussion *infra* Part VI.C.

[361] TEX. R. CIV. P. 63 (allowing amendment of pleadings without leave of court until seven days before trial. Pleading amendments after that date require a motion for leave to amend); *id.* 169(c)(2) (limiting the timing of any amended pleading "that removes a suit from the expedited actions process," but not limiting the timing of other pleading amendments).

[362] *See* discussion *supra* Part V.D.3.

expedited action process, which seek to insure fairness or prevent unfairness in the expedited case process.[363]

- A motion to remove the case from the expedited action process may be granted for good cause.[364]
- A motion for leave to amend pleadings (when more than 30 days after close of discovery or less than 30 days before trial, and the effect would be to remove the case from the expedited action process) may be granted for good cause.[365]
- A motion to extend the time limit for trial may be granted for good cause.[366]

The proof required to support a motion to extend the time limit for trial versus one to remove the case from the expedited action process seems likely to differ more in degree than kind.[367] The likelihood of establishing a uniform approach to what satisfies the "good cause" requirement across Texas courts received a good deal of attention during the expedited actions' evolutionary process, with many evidencing some not inconsiderable skepticism as to its efficacy at the trial level.[368]

Black's Law Dictionary generally defines "good cause" as the burden placed upon a litigant to show why a request should be granted or an action

[363] TEX. R. CIV. P. 169(c)(1), (c)(2), (d)(3).

[364] *Id.* 169(c)(1). A defendant wishing to remove should file a motion as soon after filing the answer as an affidavit detailing the basis for good cause can be executed and presented in good faith. Regardless of whether a motion was filed prior to the conclusion of the discovery period, a motion should be urged once discovery is completed detailing the good cause for discharge as it relates to the trial limitations. *Id.* 169 cmt. 3 (explaining the factors to be considered by the court: whether there are multiple claimants whose claims aggregate over $100,000, whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed in Texas Rule of Civil Procedure 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary).

[365] *Id.* 169(c)(2). *See id.* 63 (allowing amendment of pleadings without leave of court until seven days before trial, unless a different date for pleading amendments is set by a pretrial scheduling order).

[366] *Id.* 169(d)(3). *See* discussion *infra* Part VII.A. (noting that a motion to extend time limits for trial considers the allocation of time "per side" rather than "per party").

[367] TEX. R. CIV. P. 169(c)(1). *See* TEX. R. CIV. P. 169(d)(3).

[368] Meeting of the Texas Supreme Court Advisory Committee, 24155 (Jan. 28, 2012) (statement of David Chamberlain) ("[T]hose of us who favor a voluntary rule think that [good cause] is a trap, and it's something defendant is just not going to be able to get out of; and good cause, there is a body of case law surrounding the term 'good cause,' and quite frankly it's a pretty onerous burden.").

excused.[369] However, the term "good cause" lacks a standardized meaning and can mean different things in different contexts.[370] A court's interpretation of the term "good cause" changes depending on the situation.[371]

Good cause is not defined in the rule, but a comment provides guidance:

> In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.[372]

These factors appear to be illustrative, not exclusive. Ultimately, the question of good cause will be determined on a case-by-case basis, subject to the court's discretion and the ability of counsel to advocate issues of fairness.[373]

Only time will tell what will prove to be a satisfactory showing of good cause in an expedited action setting. History being any guide, litigants can be expected to craft creative arguments for and against "good cause," which will be interpreted inconsistently at the trial court level until the Supreme Court has the opportunity to expand upon its commentary to the rules.

VII. CONDUCT OF TRIAL

A. Time Limits for Trial

In the expedited action process, the time limits for conducting depositions are expressed in hours "per party" but the time limits for trial

[369] BLACK'S LAW DICTIONARY 213 (9th ed. 2009).

[370] Montgomery Cnty. Hosp. Dist. v. Brown, 965 S.W.2d 501, 504 (Tex. 1998) (J. Gonzalez, concurring); *In re* M.C.F., 121 S.W.3d 891, 896 (Tex. App.—Fort Worth 2003, no pet.) (recognizing the different definitions of good cause depending on the circumstances).

[371] Carpenter v. Cimarron Hydrocarbons Corp., 98 S.W.3d 682, 687 (Tex. 2002).

[372] TEX. R. CIV. P. 169 cmt. 3 (2013).

[373] *See id.*

are expressed in hours "per side."[374] "Side" carries the same definition as set forth in Texas Rule of Civil Procedure 233,[375] meaning "one or more litigants who have common interests on the matters with which the jury is concerned."[376] For purposes of an analogous allocation of peremptory challenges during jury selection, the existence of some antagonism between litigants does not necessarily prevent them from being considered on the same "side" provided some adjustment is made to accommodate for the antagonism.[377] One side with more parties and the existence of some antagonism between those parties on a matter to be submitted to the jury may need more total time than the opposing side.[378] The court in an expedited case may likewise have discretion to make adjustments in time allocations between sides and among litigants on the same side in a similar manner.[379]

Each side has eight hours "to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments."[380] However, time spent "on objections,

[374] *Compare* TEX. R. CIV. P. 190.2(b)(2) (limiting deposition time) *with* TEX. R. CIV. P. 169(d)(3) (limiting trial time).

[375] *Id.* 169(d)(3)(A).

[376] *Id.* 233. The language of TEX. R. CIV. P. 233, if modified to apply to trial time, might reasonably be read to provide:

> In multiple party cases, upon motion of any litigant made prior to ~~the exercise of peremptory challenges~~ or following voir dire, it shall be the duty of the trial judge to ~~equalize the number of peremptory challenges~~ adjust trial time so that no litigant or side is given unfair advantage as a result of the alignment of the litigants and the ~~award of peremptory challenges~~ allocation of trial time to each litigant or side. In determining how ~~the challenges~~ time should be allocated the court shall consider any matter brought to the attention of the trial judge concerning the ends of justice and the elimination of an unfair advantage.

Id. (modifications by author).

[377] Patterson Dental Co. v. Dunn, 592 S.W.2d 914, 919 (Tex. 1979). (requiring the trial court to consider the relevant facts and circumstances of the case including the pleadings, information disclosed by pretrial discovery, information and representations made during voir dire, and other information brought to the trial court's attention when determining antagonism. The trial court is not required by the rule, in setting maximum time limits per side, to allocate each the same amount of time).

[378] *See generally* Garcia v. Central Power & Light Co., 704 S.W.2d 734 (Tex. 1986).

[379] *Id.* It may also be appropriate to reurge a motion (or seek to reverse a ruling) to adjust time limits after voir dire, based upon statements made during voir dire.

[380] TEX. R. CIV. P. 169(d)(3).

bench conferences, bills of exception, and challenges for cause to a juror . . . [is] not included in the time limit."[381]

For good cause,[382] this time limit per side may be extended to not more than twelve hours on motion of any party.[383] If twelve hours would still not be sufficient time to adequately present the case, the alternative motion would be a motion to remove the case from the expedited action process for good cause, as the court lacks discretion to extend time beyond 12 hours per side.[384]

B. Maximizing Use of Time in Trial

Whether eight hours or twelve, the time limits for trial of an expedited case require efficiency. We offer these suggestions:

- Anticipate spending more time on final preparations for trial than the time that will actually be spent in trial, in order to make sure that the full case can be presented well in the time available.
- Operate from a written order of proof: a witness-by-witness game plan for the presentation of evidence, with allocations of time per witness (whether for direct or cross), and a listing of exhibits with each witness.
- Test the order of proof with mock examinations before trial, checking the adequacy of allocations of time.
- Spend a disproportionate amount of pretrial time preparing to tell the story well and persuasively in the opening statement, since a well-told opening statement will help jurors make sense of a case being presented with short amounts of testimony and a minimum number of exhibits.
- Test the opening statement with a couple of people who know nothing about the case, asking for questions.
- Use an agreed supplemental juror questionnaire to get maximum information from potential jurors in a minimum amount of time.

[381] *Id.* 169(d)(3)(B).

[382] *See* discussion *supra* Part VI.C.

[383] TEX. R. CIV. P. 169(d)(3).

[384] *Id.* 169(c)(1)(A).

- Consider keeping two or three enlarged foam board charts in front of the jury throughout trial with key reference information about the case, such as a listing of witnesses with names and photos, a basic timeline, a glossary of key terms, or a family tree or organizational chart.
- Severely limit the number of exhibits to be presented to the jury, staying with the bare minimum truly needed.
- Work to get all exhibits pre-admitted and included within juror exhibit notebooks so that no time is spent in trial authenticating and offering exhibits or passing exhibits among jurors.
- Use a good trial presentation software program (such as Sanction, TrialDirector, ExhibitView, or Visionary) to smoothly present exhibits and edited video depositions, with an assistant responsible for operation of the trial presentation program.
- Agree with opposing counsel, if possible, to use the same trial presentation program with a unified numbering scheme for exhibits.
- Limit the calling of live witnesses (for whom time allocations are unpredictable), and instead produce most witnesses (including witnesses being called adversely) by tightly-edited video depositions of 15 minutes or less.
- Edit depositions before trial by watching them on screen, not just reading the testimony from transcripts, since *how* witnesses say things is often more important than what they say.
- Get all deposition excerpts and objections from both sides ruled upon prior to trial so as to keep the trial flowing, with stipulations regarding the allocation of time to each side for each deposition.
- Play all testimony from a deposition at one time, rather than in a disjointed fashion, provided the time allocations to each side have already been stipulated.
- Compensate for the abundant use of video depositions by arranging them in an order that tells an interesting story, interspersing witnesses being called adversely[385] with those who

[385] This presumes that useful admissions have been obtained from the adverse witnesses through cross examination, and that the witnesses qualify as adverse witnesses pursuant to Texas Rule of Evidence 611(c), with whom leading questions may be used at trial.

are supportive and with any live witnesses, and displaying visual exhibits with the video depositions.

- Keep jurors involved in the story with passion, energy and movement in the courtroom.
- Strive to keep the charge as simple as possible.

VIII. POTENTIAL AGREEMENTS TO CONSIDER

A. Agreeing to Alternative Procedures

The Texas Supreme Court declined to approve a voluntary expedited case process as an alternative to the mandatory process.[386] Generally, however, courts are receptive to agreements between parties that facilitate the trial process.[387]

Some agreements would be considered merely ancillary to the mandatory expedited case rules. A simple Rule 11 agreement should be sufficient to make these agreements binding on the parties.[388]

As an alternative, courts and parties may consider agreeing upon a true voluntary replacement to the mandatory expedited action process (or applying voluntary procedures to a case that doesn't even qualify for the mandatory expedited action process). To be in compliance with the law, if the parties are seeking to replace the mandatory expedited action process with a set of voluntary procedures, they would need to ask the trial court to remove the case from the expedited process for good cause.[389] In this situation, "good cause" would be based upon a finding that the agreed replacement procedures will result in a fair trial achieved in less time and at lower cost than would be true with the mandatory expedited case process.[390]

Trial judges and attorneys in McLennan County are currently experimenting with a pilot project providing an alternative agreed approach to expedited trials, looking to build further on the desire to try cases quickly, fairly and inexpensively.[391] The current model agreement, which

[386] *See* discussion *supra* Part IV.B.

[387] *See* discussion *supra* Part III.A.

[388] TEX. R. CIV. P. 11.

[389] *Id.* 169(c)(1)(A).

[390] *See* discussion *supra* Part VI.C.

[391] *See infra* Appendix A.

parties are free to revise in accordance with the needs of their case, is included as Appendix A.[392]

IX. CONCLUSION

Notwithstanding the mixed results of the early adopters, more jurisdictions are likely to continue to look for ways to reduce the cost of and investment of time in civil trial actions. The recent focus on short, summary, and expedited trials is likely to continue. In Texas, it remains to be seen whether claimants, given an opportunity, will tend to opt into or out of this new process. While it is "mandatory," it leaves ample room for artful pleading in all but the most straightforward monetary damage claims. Boutique firms or departments within firms might well specialize in prosecuting expedited civil actions. Larger firms in particular might see the expedited action as an ideal training ground for inexperienced trial lawyers. In fact, the slow (or, not so slow—depending on one's point of view) erosion of the civil jury trial is one justification offered for the development of the expedited action. The other justification, in fact the main justification, is to provide a cost-effective avenue to the courtroom for litigants. Only time will tell to what extent the expedited actions process will be pleaded into and how well it will fulfill the legislature's expectations. The ultimate question begged by Texas' mandatory approach is whether in a given case, it advances or retards fairness and justice: a question likely to be viewed and answered differently, depending on whose ox is being gored.

[392] *See infra* Appendix A.

APPENDIX A: MCLENNAN COUNTY PROMPT TRIAL PROGRAM

Overview

1. The process is completely voluntary. One party cannot force any other party to participate. The Court may not order any party to participate unless the party has agreed to do so.
2. The agreement to use the Prompt Trial Program may be entered into at any time.
3. The amount or issue in controversy does not establish whether or not a case is appropriate for this process.
4. The number of parties does not establish whether or not a case is appropriate for this process.
5. Cases which are believed to be most likely to benefit from this program are those with one or more of the following attributes:
    a. Single or limited issues involved;
    b. Many facts can be either stipulated or determined by the admission of reports or documents;
    c. Case value does not warrant extensive discovery, live experts, or extensive trial;
    d. Cases which can be resolved in one or two trial days from start to finish;
    e. Cases with limited witness testimony;
    f. Cases which need to be tried promptly in order to preserve the rights of one or more litigants;
    g. Cases in which the parties desire a prompt, firm, trial date;
    h. Cases with insurance coverage limit issues;
    i. Cases in which a high/low agreement is advisable; or,
    j. Cases with few factual issues but with a controlling legal issue.
6. If the case is governed by Texas Rule of Civil Procedure 169, the parties must jointly request the Court to find good cause to remove the case from Texas Rule of Civil Procedure 169 and proceed pursuant to this program. The parties may also request that the Court grant a Number 1 priority setting for cases submitted under this program.
7. The parties are encouraged to:

a. Cooperate to the fullest possible extent in the discovery process;
b. Freely produce relevant documents and evidence without the need for a formal request;
c. Stipulate to uncontested facts and admissibility of uncontested exhibits;
d. Agree to the introduction of uncontested evidence without the necessity of laying the predicate required by the Texas Rules of Evidence or case law;
e. Work together to find ways to speed the trial process (and eliminate unnecessary procedural hurdles) such as preparing for the judge and jurors notebooks containing tabbed and numbered exhibits together with an index; and,
f. Agree to admission of summaries of the testimony of non-critical witnesses or affidavits, in lieu of calling a witness live or by deposition.

Outline of Contents of Prompt Trial Agreed Case Management Order and Discovery Control Plan

ALL ITEMS ARE SUBJECT TO NEGOTIATION AND AGREEMENT OF THE PARTIES:

1. All parties and all persons/entities providing indemnity or defense must agree to the process and sign the proposed Case Management Order ("CMO"), evidencing such agreement and affirming they have read it and had it explained to them by their counsel.
2. The Court finds good cause to remove the case from Texas Rule of Civil Procedure 169 Expedited Actions, if necessary.
3. Counsel for each party shall, by signing the CMO, certify that their client has been informed of the process and the contents and effect of the CMO, specifically including the limitations on appeals.
4. High/Low Agreements are encouraged and the terms of such shall be set forth in the CMO but shall not be disclosed to the jury. The parties may agree to a cap on damages, with or without a floor on damages.
5. Discovery is governed by Texas Rule of Civil Procedure 190.2(b), unless the parties agree to different discovery limitations and such

agreement is incorporated in a CMO or is evidenced by a Rule 11 agreement filed with the Court.

6. Expert testimony may, upon agreement of the parties, be presented by a written report. It is recommended that the parties agree to the following:
    a. Such reports shall not exceed ten (10) pages, exclusive of cover pages, curriculum vitae, table of contents and index;
    b. Such reports, or an agreed summary, may be read into evidence;
    c. If a party provides an expert report by the expert designation deadline, such party may call the expert live or may read the report or an agreed summary of the report as provided above;
    d. An expert furnishing a report may be deposed by any party and such deposition may be used at trial by any party, subject to admission under the Texas Rules of Evidence;
    e. A party that has, by written or electronic notice to all other parties within fifteen (15) days after the party's designation deadline, committed not to call an expert live and has produced a report shall not be charged with the cost of the expert's deposition fee or court reporter's fee for such deposition. In such instance, the party deposing the expert must pay the expert's fee and the court reporter's fee for such deposition;
    f. The foregoing paragraph shall not limit the right of an adverse party to present properly disclosed expert testimony at trial, to depose any expert witness and/or to subpoena an expert for testimony at a deposition or at trial; and,
    g. A party that issues a subpoena for an expert for trial testimony must pay the fee charged by the expert as a result of the subpoena.
7. No jury shuffle is allowed.
8. Each side shall have six (6) hours for all phases of trial, to be used as desired, including but not limited to: (1) voir dire; (2) opening statement; (3) direct presentation of evidence; (4) cross-examination of witnesses; (5) re-direct examination and re-cross examination of witnesses; and (6) closing argument. The term

"side" shall have the same definition as set out in Texas Rule of Civil Procedure 233.

a. Unless requested by the party sponsoring an expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Texas Rule of Civil Procedure 166a or during the trial on the merits. A motion to strike for late designation must be made no later than the pretrial conference. Challenges to the admissibility of expert testimony or to the content of a report shall count against the trial time of the party making the challenge if made after the case is called for trial;
b. Time used in making and securing a ruling on objections (other than as set forth in Number 8.a. above), including bench conferences and offers of proof and time used to make jury strikes shall not count toward the total trial time limit of a side unless the court determines that a party is deliberately or needlessly wasting time;
c. The court may expand the amount of time allowed for each side but may not reduce the time allotted to any side or party; and,
d. The parties may agree to additional trial time, with the consent of the Court.

9. The jury shall consist of six (6) members and a verdict may be rendered by the concurrence, as to each and all answers made, by the same five (5) or more jurors.
10. Each side shall be limited to three (3) peremptory challenges. If there are more than two (2) parties in a case the court shall determine requests for additional challenges under Texas Rule of Civil Procedure 233.
11. The parties agree not to request court ordered mediation and the CMO will prohibit an order for mediation. The parties may agree to mediation.
12. The parties agree to waive all of the following post- verdict motions:
    a. Directed Verdict;
    b. New Trial, except for a ground in Number 13 below;
    c. Judgment Non Obstante Veredicto ("JNOV");
    d. Disregard jury findings.

e. Inadequacy of damages;
f. Excessive damages; and,
g. Legal or factual insufficiency of evidence.

13. The parties agree that the court may not set aside or modify any verdict or judgment except on one or more of the following grounds:
    a. Judicial misconduct that materially affected the substantial right of a party;
    b. Jury misconduct;
    c. Corruption, or fraud employed in the civil action by the court, jury, or adverse party that prevented a party from having a fair trial; or,
    d. The parties recognize and agree that the time to cure improper jury argument is by seeking relief from the trial court when such occurs, not after the verdict is rendered.
14. The parties may make post-trial motions only as follows:
    a. Relating to costs and attorneys' fees, if attorneys' fees are not a subject of the verdict;
    b. To correct a clerical error in the judgment;
    c. To enforce a judgment; or,
    d. On a ground described in Number 13. a., b., or c., above.
15. The parties agree to waive an appeal except for one of the grounds set forth in 13 a, b, or c, above, and that portion of a judgment rendered under Texas Rule of Civil Procedure 166a or the imposition of sanctions.
16. Seven (7) days before trial the parties will exchange:
    a. Trial witness lists;
    b. Exhibits;
    c. Motions in Limine or to Exclude; and,
    d. Proposed charge and verdict form.
17. There will be a Final Pretrial Conference on the Friday before trial for the following matters:
    a. Court rulings on objections to documentary evidence;
    b. Motions in Limine or to Exclude. The parties are encouraged to agree upon and use the items set forth in the attached suggested "Order in Limine." Additional items may be included by agreement or by court ruling;

c. Announce agreements on evidentiary matters and other matters;
d. Exhibits pre-admitted. The parties shall bring an order for admission of their exhibits;
e. Business and medical records produced to the opposing party shall be admitted in evidence without the necessity of an affidavit of the custodian if no objection has been made in writing to the offering party within fourteen (14) calendar days after the date of production on which the offering party provided written notice of intent to all parties to offer the records into evidence at trial; and,
f. Review and discuss proposed charge with the Court and obtain preliminary rulings.

18. Only pattern jury charge questions, instructions and definitions will be submitted unless clearly inadequate or there is no applicable pattern jury charge. The parties agree to waive any objection to the charge on the basis of legal insufficiency of the evidence.
19. A court reporter will not be used to record any portion of the trial unless requested by a party. The requesting party shall pay the charges made by the court reporter for such service.
20. Agreement to submit to Prompt Trial may not be revoked or modified except:
    a. By agreement of all parties; or,
    b. The Court, on its own motion or upon motion of any party, finds that good cause exists to set aside or modify the CMO.
21. Trial and judgment will not result in claim or issue preclusion between the parties or others and will have no precedential value or effect.
22. All matters in the CMO may be altered by agreement or by the court on a finding of good cause.
23. Service of all notices and documents required or permitted to be served on any other party may be by email to the last known email address of the party.

APPENDIX B: TABLES

Table 1.

States currently with expedited/summary trial procedures; name of procedure; authority therefor and date of initial enactment

State	**Name of Procedure**	**Authority**	**Date first enacted**
Alabama	To be determined.	Ala. Code § 6–1–3	2013
Arizona (certain counties)	"Short trial"	Various local court rules.[i]	1997[ii]
California	"Expedited Jury Trial"	Expedited Jury Trials Act, 2010 Cal. Stat. 3660 (codified at Cal Civ. Proc. Code §§ 630.01–.12); Cal. R. Ct. 3.1545–3.1552	2010
Colorado	"Simplified Procedure for Civil Actions."	Colo. R. Civ. P. 16.01	2003
Florida	"expedited trial"	Fla. Stat. Ann. § 45.075	1999
Georgia	"summary jury trial"	Ga. Code Ann. § 15–23–2; Ga. Alt. Dispute. Resolution R. I; Ga. Unif. R. Dispute Resolution Programs, App'x A, Introduction, R. 2	1993
Indiana	"summary jury trial/mini trial"	Ind. Alt. Dispute Resolution R. 13, 15, 41–45, 51–57	1991
Minnesota	"summary jury trial"	Minn. Gen. R. Prac. 114.02, 114.08, 114.13; Minn. Stat. § 604.11	1993
Nebraska	"summary jury trial"	L.B. 225, 1987 Neb. Laws 600 (1987), codified at Neb. Rev. Stat. §§ 25–1154 to –1157	1987
Nevada	"short trial"	Nevada Short Trial Rules[iii]	2000

New Hampshire	"summary jury trial"	N.H. Super. Ct. R. 171	1986
New York	"simplified procedure for court determination of disputes"	N.Y. C.P.L.R. § 3031–3037	1962
New York (certain counties)	"summary jury trial"	Various local court rules.[iv]	1998[v]
North Carolina (under mediated settlement rules)	"summary bench trial" or "summary jury trial"	N.C. Super. Ct. Mediated Settlement Conf. R. 13.	2002
North Carolina (under general court rules)	"summary jury trial"	N.C. Super. & Dist. Cts. R. 23	1991
North Dakota	"summary jury trial"	N.D. R. Ct. 8.8	1999
Ohio (Wood County)	"summary jury trial"	Wood Cnty. (Ohio) Gen. Div. C.P. Ct. R. 7.12	Not known.
Oregon	"expedited trial"	Or. Unif. Trial Ct. R. 5.150	2012[vi]
Pennsylvania (various counties)	"summary jury trial"	Various local court rules.[vii]	2003[viii]
South Carolina	"Fast Track jury trial"	Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013) (state supreme court administrative order)	2013
Tennessee	"summary jury trial"	Tenn. Sup. Ct. R. 31 §§ 2–3, 10	1995 (?)
Texas	"mini-trial"	Tex. Civ. Prac. & Rem. Code Ann. § 154.024	1987
Texas	"summary jury trial"	Tex. Civ. Prac. & Rem. Code Ann. § 154.024	1987
Texas	"expedited actions	Tex. R. Civ. P. 169	2013

	process"		
Utah	"Expedited Jury Trial"	Utah Code Ann. §§ 78B–3–901 to –909; Utah R. Jud. Admin. R. 4–501	2011
Virginia	"summary jury trial"	Va. Code Ann. §§ 8.01-576.1 to 576.3	1988

Table 2.

Mode of Initiation, voluntary/mandatory nature of proceeding, binding/advisory nature of verdict, claims subject to process, and nature and limitations on damages

State	**Mode of initiation**	**Voluntary/ mandatory nature of action.**	**Binding/ advisory nature of verdict**	**Claims subject to process.**	**Nature and limitations on damages.**
Alabama[ix]	To be determined.	To be determined.	To be determined.	Civil actions not exceeding $50,000.[x]	To be determined.
Arizona (Maricopa county)[xi]	By parties.[xii]	Voluntary[xiii]	Binding[xiv]	Civil cases, no further limitations specified.[xv]	None specified.
California	By parties.[xvi]	Voluntary[xvii]	Binding, subject to any high/low agreement.[xviii]	No limitations specified.	High/law agreements between parties to be honored.[xix]
Colorado	Varies[xx]	Opt-out required in some cases, otherwise voluntary[xxi]	Binding	Automatic for civil cases under $100,000, others may opt-in.[xxii]	Limit of $100,000, excl. interest and costs, with exception.[xxiii]
Florida	By parties.[xxiv]	Voluntary[xxv]	Binding	"Any civil case."[xxvi]	None specified.
Georgia	By party.[xxvii]	Unclear[xxviii]	Advisory[xxix]	"Any contested civil case."[xxx]	None specified.
Indiana (summary jury trial)	By court or by parties.[xxxi]	Voluntary[xxxii]	Advisory[xxxiii]	"A civil case."[xxxiv]	None specified.

Indiana (mini-trial)	By court or by parties.[xxxv]	Potentially mandatory[xxxvi]	Advisory [xxxvii]	"A civil case."[xxxviii]	None specified.
Minnesota	By court or by parties.[xxxix]	Potentially mandatory[xl]	Advisory[xli]	No limitations specified.	None specified.
Nebraska	By parties.[xlii]	Voluntary[xliii]	Advisory, unless otherwise agreed.[xliv]	Any civil action. [xlv]	None specified.
Nevada	Automatic, in some cases, or by parties.[xlvi]	Mandatory in certain cases, voluntary in others.[xlvii]	Advisory, unless otherwise agreed.[xlviii]	Civil cases, no other limitations specified.[xlix]	Not to exceed $50,000 excl. att'y fees, costs, and interest, unless otherwise stipulated.[l]
New Hampshire	By parties or court.[li]	Potentially mandatory.[lii]	Advisory unless otherwise agreed.[liii]	Cases which satisfy certain conditions. [liv]	None specified.
New York ("simplified procedure")	By parties.[lv]	Voluntary[lvi]	Binding	No limitations specified.	None specified
New York (summary jury trial) (N.Y. County)[lvii]	By parties.[lviii]	Voluntary[lix]	Binding[lx]	No limitations specified.	None specified.

North Carolina (under mediated settlement rules.)	By parties.[lxi]	Voluntary, as alternative to mediated settlement conference.[lxii]	Advisory, unless otherwise agreed, high/low agreement also authorized.[lxiii]	Not specified.	Not specified.
North Carolina (under general court rule)	By parties or court.[lxiv]	Voluntary[lxv]	Advisory, unless otherwise agreed.[lxvi]	No limitations specified.	None specified.
North Dakota	By parties.[lxvii]	Voluntary[lxviii]	Advisory	No limitations specified.	None specified.
Ohio (Wood County)	By court.[lxix]	Mandatory[lxx]	Advisory unless otherwise agreed.[lxxi]	Case should be "trial ready" before order.[lxxii] No other limitations.	None specified.
Oregon	By party.[lxxiii]	Voluntary[lxxiv]	Binding	"Civil cases eligible for jury."[lxxv]	None specified.
Pennsylvania (Lawrence County)	By court.[lxxvi]	Potentially mandatory[lxxvii]	Advisory, unless otherwise agreed.[lxxviii]	"Civil cases."[lxxix]	None specified.
South Carolina	By parties[lxxx]	Voluntary[lxxxi]	Binding[lxxxii]	No limitations specified.	None specified; high-low agreements honored.[lxxxiii]
Tennessee	By party[lxxxiv]	Potentially mandatory[lxxxv]	Advisory [lxxxvi]	No limitations specified.	None specified.

Texas (mini-trial)	By parties[lxxxvii]	Voluntary[lxxxviii]	Advisory unless otherwise agreed[lxxxix]	No limitations specified.	None specified.
Texas (summary jury trial)	Not specified.	Not specified.	Advisory.[xc]	No limitations specified.	None specified.
Texas (expedited actions process)	Automatic [xci]	Mandatory, removable in some cases.[xcii]	Binding	Suits where all claimants seek less than $100,000, and counterclaims thereto, excluding certain suits.[xciii]	$100,000 cap on recovery for claimants "prosecut[ing] a suit under this rule."[xciv]
Utah	By party.[xcv]	Voluntary[xcvi]	Binding	Any civil case triable by jury.[xcvii]	High-low agreement mandatory. [xcviii]
Virginia	By parties.[xcix]	Voluntary[c]	Advisory, unless otherwise agreed.[ci]	Any civil case[cii]	None specified.

Table 3.

Details for presider, trier of fact, verdict, and selection procedure

State	**Presider**	**Trier of fact**	**Number of Jurors**	**Number required for verdict**	**Selection procedure**
Alabama	To be determined				
Arizona "short trial"	Judge pro tempore[ciii]	Jury[civ]	4[cv]	3[cvi]	Four jurors from pool of ten.[cvii]
California "expedited jury trial"	"Judicial officer."[cviii]	Jury[cix]	8[cx]	6[cxi]	No alternates, three peremptory challenges per side, in most cases.[cxii] "Approximate-ly one hour" for voir dire.[cxiii]
Colorado "simplified procedure for civil actions"	No variation specified.				
Florida	No variation specified.	Judge or jury.[cxiv]	No variation specified.		Voir dire limited to one hour. [cxv]
Georgia	"Judge or magistrate. "[cxvi]	Jury[cxvii]	No variation specified.		
Indiana (summary jury trial)	Qualified neutral chosen by parties or by court.[cxviii]	Jury[cxix]	6[cxx] (no alter-nates)	Varies, verdict is advisory [cxxi]	To be selected in "an expedited fashion."[cxxii]

Indiana (mini-trial)	Neutral official "may preside."[cxxiii]	Not applicable.			
Minnesota	Not specified	Jury[cxxiv]	6[cxxv]	Not specified.	
Nebraska	Judge, but presider not required.[cxxvi]	Jury[cxxvii]	6[cxxviii]	Advisory, no figure specified.[cxxix]	Judge to conduct voir dire, allowing two peremptory challenges per side.[cxxx]
Nevada	District judge or pro tempore judge.[cxxxi]	Presider or jury.[cxxxii]	4, 6, or 8[cxxxiii]	Not specified.	Fifteen minutes per side for voir dire, two peremptory challenges each.[cxxxiv]
New Hampshire	Judge[cxxxv]	Jury[cxxxvi]	6[cxxxvii]	Consensus or individual.[cxxxviii]	"In accordance with usual procedures."[cxxxix]
New York (simplified procedure)	Judge[cxl]	Judge[cxli]	Not applicable		
New York (summary jury trial) (New York County)	Not specified.	Jury.[cxlii]	Not specified.[cxliii]	Not specified.[cxliv]	By court (N.Y. county)[cxlv], varies elsewhere.[cxlvi]
North Carolina (under mediated settlement	Presiding officer selected by parties.[cxlvii]	Presiding officer, or privately selected and comp-	12[cxlix]	Suggested procedure provided.[cl]	Three peremptory challenges per side.[cli]

conference rules)		ensated jury.[cxlviii]			
North Carolina (general court rules.)	Referee selected by parties.	Jury.	Not specified.		As agreed by parties.
North Dakota	No provision specified.	Jury[cli]	No provision specified.[cliii]	No provision specified.	
Ohio (Wood County)	Judge[cliv]	Jury[clv]	6[clvi]	5[clvii]	Six jurors drawn from venire of ten. Judge conducts voir dire. Two challenges per side.[clviii]
Oregon	Not specified.[clix]	Jury[clx]	6[clxi]	Not specified.	Not specified.
Pennsyl-vania (Lawrence County)	Not specified.	Jury[clxii]	6[clxiii]	5[clxiv]	Voir dire conducted by court. Counsel may submit questions for voir dire at pretrial conference.[clxv]
South Carolina	"Special Hearing Officer" selected by parties.[clxvi]	Jury[clxvii]	6[clxviii]	Not specified.	Voir dire to be conducted by Special Hearing Officer or judge, Two peremptory challenges per side.[clxix]
Tennessee	"Presiding	Jury [clxxi]	Not specified.		

	neutral person"[clxx]				
Texas (mini-trial)	Parties, their representa-tives or an "impartial third party."[clxxii]	Presiding individ-ual(s)[clxxiii]	Not specified.		
Texas (summary jury trial)	Not specified.	Jury[clxxiv]	6[clxxv]	Not specified.	
Texas (expedited actions process)	No variation specified.				Total time for trial, including jury selection limited to eight hours per side, with exceptions.[clxxvi]
Utah	No variation specified.	Jury[clxxvii]	6[clxxviii]	5[clxxix]	Thirty minutes per side for voir dire, one peremptory challenge per side.[clxxx]
Virginia	Not specified.	Jury.[clxxxi]	7[clxxxii]	Not specified.	Selected according to standard jury procedure.[clxxxiii]

Table 4

Calendar limits

State	**Limits re: election of expedited procedure**	**Limits re: exclusion from proce-dure**	**Limits re: discovery**	**Limits re: pretrial conferences**	**Limits re: start of trial**
Alabama	To be determined.				
Arizona	Not specified.			Telephonic conference at least three days prior to trial.[clxxxiv]	Not specified.
California	"30 days before any assigned trial date."[clxxxv]	Not specified.	Not specified; subject to some modifications as agreed to by parties.[clxxxvi]	No later than 15 days prior to trial, unless modified by agreement.[clxxxvii]	Not specified.
Colorado	In optional cases, must be within 49 days of case being "at issue."[clxxxviii]	In automatic cases, exclusion must be made within 35 days after case is "at issue."[clxxxix]	Most discovery prohibited, except where parties mutually agree, with exceptions.[cxc]	Not specified.	
Florida	Not specified.		Complete within 60 days. Other limits also set.[cxci]	Not specified.	"May be tried within 30 days" of close of discovery.[cxcii]
Georgia	Not specified.				

Indiana (mini trial)	15 days.[cxciii]	15 days after notice case has been selected for mini-trial.[cxciv]	Discovery proceeds according to standard rules.[cxcv]	Not specified.	
Indiana (summary jury trial)	After completion of discovery.[cxcvi]	Not specified.		Agreement must set date for pretrial conference.[cxcvii]	"Firmly fixed time" for trial must be set at pretrial conference.[cxcviii]
Minnesota	Not specified.				
Nebraska	Not specified.				
Nevada	Varies.[cxcix]	Varies.[cc]	Not specified.	To be held no later than ten days before short trial date.[cci]	Not later than 120 days after assignment of presiding judge.[ccii]
New Hampshire	Not specified.				Court to set date.[cciii]
New York (simplified procedure)	Not specified.	Not specified.	Not specified.	Pretrial conference "may be held."[cciv]	To commence as stated in "note of issue" or as soon as practicable thereafter.[ccv]
New York (summary jury trial)	Not specified.				To be scheduled on earliest date available.[ccvi]

North Carolina (mediated settlement conference rules)	Not specified.			
North Carolina (general court rules)	Not specified.			As per agreement of parties.[ccvii]
North Dakota	Not specified.			
Ohio	Not specified.		Court "may conduct prehearing conference." [ccviii]	Not specified.
Oregon	Not specified.	Complete within 21 days of trial, serve requests within 60 days of trial.[ccix]	No later than 14 days before trial date.[ccx]	Within four months of order.[ccxi]
Pennsylvania	Not specified.			
South Carolina	Not specified.	Limits regarding service of documentary evidence and material to be presented to jury.[ccxii]	To be held no later than ten days before trial.[ccxiii]	Date "mutually convenient for parties."[ccxiv]
Tennessee	Not specified.			
Texas (mini-trial)	Not specified.			

Texas (summary jury trial)	Not specified.				
Texas (expedited actions process)	Applies automatically in applicable cases.[ccxv]	Time limit on pleading to remove suit.[ccxvi]	Discovery to be completed within 180 days of first service of discovery.[ccxvii]	Not specified.	Trial date must be set 90 days after close of discovery period, with exception.[ccxviii]
Utah	Agreement for expedited jury trial to be made at close of discovery.[ccxix]	Not specified.		"Case management conference" to be held within 14 days of entering order for expedited trial.[ccxx]	Date certain to be set not beyond 60 days of case management conference.[ccxxi]
Virginia	Not specified.				To be scheduled "as soon as convenient" for parties.[ccxxii]

Table 5.

Other discovery limits

State	**Deposition limits**	**Discovery request limits**	**Other provisions**
Alabama	To be determined.		
Arizona	Not specified.		
California	Not specified.		Certain discovery-related modifications can be agreed to by parties.[ccxxiii]
Colorado	Use of depositions limited.[ccxxiv]	Use of discovery requests limited.[ccxxv]	Expanded disclosure requirements.[ccxxvi]
Florida	Court to "determine the number of depositions required."[ccxxvii]	Not specified.	Not specified.
Georgia	Not specified.		
Indiana (mini-trial)	Not specified.		
Indiana (summary jury trial)	Not specified.		
Minnesota	Not specified.		
Nebraska	Not specified.		Parties to exchange summaries or representations at least ten days prior to trial.[ccxxviii]
Nevada	Not specified.		
North Carolina (under mediated settlement conferences rule)	Not specified.		Presiding officer to set dates for exchange of documents and evidence to be used or referenced at trial.[ccxxix]

North Carolina (under general court rule)	Not specified.		
New Hampshire	Not specified.		Proposed exhibits to be exchanged prior to trial.[ccxxx]
New York (simplified procedure)	Not specified.		
New York (summary jury trial)	Not specified.		
North Dakota	Not specified.		
Ohio	Not specified.		
Oregon	No more than two after party requests expedited trial.[ccxxxi]	One set of requests for admission and one of requests for production after party requests expedited trial.[ccxxxii]	Parties may further limit scope, nature, and timing of discovery by written agreement.[ccxxxiii] Additional disclosure requirements apply.[ccxxxiv]
Pennsylvania (Lawrence County)	Not specified.		
South Carolina	Not specified.		
Tennessee	Not specified.		
Texas (mini-trial)	Not specified.		
Texas (summary jury trial)	Not specified.		

Texas (expedited actions process)	Six-hour limit per side on depositions, can be extended.[ccxxxv]	Limit of 15 interrogatories, requests for production, and requests for admission each, with exceptions.[ccxxxvi]	Not specified.
Utah	Not specified.		
Virginia	Not specified.		

Table 6.

Trial procedure and time limits.

State	**Rules of evidence and procedure**	**Trial Time Limits**	**Rules regarding expert witnesses**	**Rules regarding other witnesses**	**Special trial provisions**
Alabama	To be determined.				
Arizona	Local court admin. rules and bench book outline some rules, applicability of general rules not specified.[ccxxxvii]	"Approximately" two hours per side.[ccxxxviii]	Live testimony discouraged.[ccxxxix]	Live testimony discouraged.[ccxl]	"Witnesses can be used by deposition or affidavit."[ccxli] Evidentiary notebooks may also be used.[ccxlii]
California	Standard rules apply except where modified by statutes and rules specific to expedited trials or by stipulation by parties.[ccxliii]	Three hours per side, excluding jury selection. Extension for good cause.[ccxliv]	Certain rules governing expert witnesses can be modified by stipulation.[ccxlv]	Certain rules governing witnesses can be modified by stipulation.[ccxlvi]	Not specified.

Colorado	Rules of evidence and procedure apply except as provided in Colo. R. Civ. P. 16.1(k).	Not specified.	Direct testimony limited to discussing information in disclosures, with exceptions.[ccxlvii]	Direct testimony limited to discussing information in disclosures, with exceptions.[ccxlviii]	Cases proceeding under simplified procedure to be given early trial settings and hearings.[ccxlix]
Florida	Standard rules of evidence and procedure apply, except where otherwise stated.[ccl]	Trial limited to one day, one hour for jury selection, three hours per side following.[ccli]	Affidavit of CV and written report of expert may be submitted in lieu of live testimony.[cclii]	Excerpts of depositions may be used in lieu of live testimony.[ccliii]	Jury instructions and verdict form must be in "plain language."[ccliv]
Georgia	Not specified.				
Indiana (mini-trial)	Not specified.	Parties to present "highly abbreviated summary."[cclv]	Not specified.		
Indiana (summary jury trial)	Not specified.	Evidence to be presented in "expedited fashion."[cclvi] Jury deliberations time-limited.[cclvii]	Not specified.		

Minnesota	Not specified.	Not specified.[cclviii]	Not specified.[cclix]	Not specified.[cclx]	Not specified.[cclxi]
Nebraska	Not specified.	As agreed to by parties and court.[cclxii]	No direct presen-tation of evidence.[cclxiii]	No direct presentation of evidence.[cclxiv]	Parties to present "representations or summaries of evidence."[cclxv]
Nevada	Provided for in Short Trial Rules.[cclxvi]	Three hours per side unless otherwise agreed to by parties and court.[cclxvii]	No voir dire of experts, written reports may be used in lieu of testimony, cap on expert fees.[cclxviii]	Not specified.	Numerous mandatory provisions to simplify presentation of evidence.[cclxix]
New Hamp-shire	Not specified.	One hour per side.[cclxx]	No direct testimony.[cclxxi]	No direct testimony.[cclxxii]	Evidence to be presented "through the attorneys.[cclxxiii]
North Carolina (under mediated settlement confer-ence rule)	Not specified.	As provided in pretrial order.[cclxxiv]	No live testimony, except where "credibility of a witness is important."[cclxxv]	No live testimony, except where "credibility of a witness is important."[cclxxvi]	Parties may read from depositions, encouraged to stipulate to documents, photos, summaries.[cclxxvii]
North Carolina (under general court rule)	Not specified.	As agreed to by parties and court.[cclxxviii]	As agreed to by parties and court.[cclxxix]	As agreed to by parties and court.[cclxxx]	As agreed to by parties and court.[cclxxxi]

North Dakota	Not specified.	To be conducted in a "summary abbreviated fashion." [cclxxxii]	Not specified; "expert jurors" may be used.[cclxxxiii]	Not specified.	
New York (simplified procedure)	Rules of evidence "dispensed with except as court may otherwise direct." [cclxxxiv] Standard rules of procedure inapplicable.[cclxxxv]	Not specified.			
New York (summary jury trial) (N.Y. County)	Not specified.	Each side to have ten minutes for opening and closing statements and one hour for presentations. [cclxxxvi]	Prohibited. [cclxxxvii]	No more than two witnesses per side.[cclxxxviii]	Not specified.
Ohio (Wood County)	Not specified. [cclxxxix]	One hour per side, may be modified at courts discretion.[ccxc]	No live testimony.[ccxci]	No live testimony. [ccxcii]	Evidence to be presented "through attorneys." [ccxciii]
Oregon	Not specified. [ccxciv]	Not specified.[ccxcv]	As per agreement of parties.[ccxcvi]	As per agreement of parties.[ccxcvii]	As per agreement of parties.

					ccxcviii
Pennsylvania (Lawrence County)	Partially provided for in local rule.[ccxcix]	One hour per side, extension available for compelling reasons. Plaintiff to have 15-minute rebuttal.[ccc]	No live testimony, except where credibility "will determine the major issues."[ccci]	No live testimony, except where credibility "will determine the major issues."[cccii]	Presentation to consist of argument, summary of evidence, and statement of law.[ccciii]
South Carolina	As in standard trials, but parties are encouraged to modify by stipulation.[ccciv]	Trial "should not last longer than one (1) day."[cccv]	If live expert witness to be called, party shall give notice and opportunity to depose.[cccvi]	Parties encouraged to limit number of live witnesses.[cccvii]	Standard trials to have priority over Fast-Track Jury trials in scheduling or use of court resources.[cccviii]
Tennessee	Not specified.	To be conducted in "expedited fashion."[cccix]	Not specified.		
Texas (mini-trial)	Not specified.				
Texas (summary jury trial)	Not specified.				
Texas (expedited actions process)	Not specified.[cccx]	Eight hours per side for jury selection, presentation, and closing arguments.[cccxi]	Ability to challenge expert testimony limited.[cccxii]	Not specified.	

Utah	Rules of evidence apply unless otherwise stipulated by parties.[cccxiii]	No more than three hours per side.[cccxiv]	Agreement to include "limits on number of witnesses." [cccxv]	Agreement to include "limits on number of witnesses." [cccxvi]	Agreement to include further stipulations, limitations, and liberties re: presentation of evidence. [cccxvii] Specific rules govern practical effect of verdict as relates to high-low agreement. [cccxviii]
Virginia	Partially provided for in Va. Code Ann. § 8.01-576.3.	Not specified.	No witnesses or submission of documents except as agreed to by parties.[cccxix]	No witnesses or submission of documents except as agreed to by parties.[cccxx]	Parties to present "summary of evidence" and given opportunity to rebut.[cccxxi]

Table 7.

Ability to withdraw, creation or keeping of record, and ability to seek reconsideration or appeal

State	**Provisions re: withdrawal**	**Provisions re: record**	**Ability to seek reconsideration or appeal**
Alabama	To be determined.		
Arizona	Not specified.	Not specified.	No appeal unless there is "issue of fraud." [cccxxii]
California	On agreement of all parties, or, on finding of good cause, on motion of party or *sua sponte* by court.[cccxxiii]	Not specified.	Right to bring appeal or bring post-trial motions waived except for misconduct, corruption, etc.[cccxxiv]
Colorado	Timely opt-out permitted.[cccxxv] Otherwise, on showing of "substantially changed circumstances."[cccxxvi]	Not specified.	
Florida	Not specified.		
Georgia	Not specified.		
Indiana (mini-trial)	Party may file objection.[cccxxvii]	Deemed confidential.[cccxxviii]	Not specified.
Indiana (summary jury trial)	Not specified.	Deemed confidential.[cccxxix]	Not specified.
Minnesota	Not specified.	Deemed confidential.[cccxxx]	Not specified.
Nebraska	Not specified.	Record "not required."[cccxxxi]	Appeal prohibited.[cccxxxii]

Nevada	Any party may file "demand for removal."[cccxxxiii] Fee for removal applies.[cccxxxiv]	Not specified.	Direct appeal available to state supreme court.[cccxxxv]
New Hampshire	Objection to placement allowed.[cccxxxvi]	No record permitted except in "extraordinary circumstances."[cccxxxvii]	Not specified.
New York (simplified procedure)	Not specified.		Very limited right to appeal.[cccxxxviii]
New York (summary jury trial) (N.Y. County)	Not specified.	Not specified.[cccxxxix]	Right to reconsideration or appeal waived, with exceptions.[cccxl]
North Carolina (under mediated settlement rule)	Not specified.		
North Carolina (under general court rule)	Not specified.		
North Dakota	Not specified.	Deemed confidential.[cccxli]	Not specified.
Ohio	Not specified.	Unless specifically ordered otherwise by the court, no record, party may make own arrangements for transcript.[cccxlii]	Not specified.
Oregon	Not specified.		

Pennsylvania (Lawrence County)	Not specified.		
South Carolina	Agreement "irrevocably binding absent fraud."[cccxliii]	Not specified.	Parties may waive right to post-trial motions and parties waive appeal absent fraud.[cccxliv]
Tennessee	Not specified.		
Texas (mini trial)	Not specified.		
Texas (summary jury trial)	Not specified.		
Texas (expedited actions process)	By claimant's (other than a counter-claimant's) amended pleading no longer qualifying, or by any party for good cause.[cccxlv]	Not Specified	
Utah	Not specified.	As for standard trials.[cccxlvi]	Limited right to appeal or to seek new trial.[cccxlvii]
Virginia	Not specified.		

Table 8.

Statistics.

State	**Statistics**
Alabama	To be determined.
Arizona	In Maricopa County, frequency of short trials "grew consistently from a few dozen a year in the late 1990s to more than 100 in 2002 . . . . The numbers of short trials dwindled to 50 or fewer per years in 2003 and 2004, and averaged only 18 per year from 2005 to 2009. Only 9 short trials were conducted each year in 2010 and 2011."[cccxlviii]
California	From Jan. to Nov. 2011, 19-25 expedited jury trials conducted in Los Angeles County; "approximately 4" in San Francisco County.[cccxlix] "A few attorneys practicing in Orange County reported having conducted approximately ten (expedited jury trials)."[cccl]
Colorado	No data.[cccli]
Florida	2001 article describes expedited trial law as "newly enacted but underutilized."[ccclii] The 2012 edition of a Florida law treatise describes the expedited trial law as "an exercise in futility"[ccccliii]
Georgia	"Summary jury trial is rarely used in Georgia . . . ."[ccccliv]
Indiana (mini-trial)	No data.
Indiana (summary jury trial)	No data.
Minnesota	No data.
Nebraska	According to one commentator in 2010 "no more than a handful has ever occurred."[ccclv]
Nevada	Stipulations to short trial in 8th Judicial District (i.e. Las Vegas area) peaked near 600 in 2007 following requirement of $1,000 opt-out fee, decreasing to approximately 250 in 2009, and increasing to near 600 in 2010. Number of short trials held steadily rose to over 100 in 2008, and remained between 100 and 125 in 2009 and 2010.[ccclvi]
New Hampshire	No data.
New York (simplified procedure)	No data.

New York (summary jury trial) (N.Y. County)	Various jurisdictions reported either steady increases in the use of their summary jury trial or peaks followed by declines from 2007 to 2010. The 12th Judicial District, Bronx County, reported the highest figures, between 100 and 200 in 2009 and 2010.[cccvii]
North Carolina (under mediated settlement rule)	No data.
North Carolina (under general court rule)	No data.
North Dakota	No data.
Ohio	No data.
Oregon	Only eight cases scheduled from August 2010 to November 2011 in Multnomah County (i.e. Portland), under what apparently was a prior version of Rule 5.150, this was "a considerably slower start than anticipated . . . ."[ccclviii]
Pennsylvania	No data.
South Carolina	Under initial program in Charleston County, summary jury trials accounted for "nearly half the total number of civil jury trials in 2006 and approximately one quarter in 2007 through 2010."[ccclix]
Tennessee	No data.
Texas (mini trial)	No data.
Texas (summary jury trial)	No data.
Texas (expedited actions process)	No data.
Utah	No data.
Virginia	No data.

[i] *E.g.*, ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf.

[ii] *See* Paula Hannaford-Agor & Nicole L. Waters, *Future Trends In State Courts: The Evolution of the Summary Jury Trial: A Flexible Tool to Meet a Variety of Needs*, NAT'L CENTER FOR STATE COURTS, *available at* http://www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/Better-Courts/~/media/Microsites/Files/Future%20Trends%202012/PDFs/

Evolution.ashx.

[iii]NEV. SHORT TRIAL R. 1, *available at* http://www.leg.state.nv.us/courtrules/NSTR.html.

[iv]*See, e.g.*, N.Y. CNTY. (N.Y.) STATEMENT OF JURY TRIAL PROC. Unless otherwise stated, the provisions provided herein are for New York County (i.e., the borough of Manhattan).

[v]Hannaford-Agor & Waters, *supra* n.ii, at 2 (providing the date of initial establishment of the program in Chautauqua County).

[vi]Nat'l Ctr. for State Courts, *Short, Summary & Expedited: The Evolution of Civil Jury Trials*, NCSC, 7 (2012) [hereinafter *Evolution*], available at http://www.ncsc.org/SJT (giving May 2010 as date of enactment for OR. UNIF. TRIAL CT. R. 5.150, but this varies with information on Westlaw).

[vii]Order Adopting the Local Rules of Civil Procedure for Lawrence County, No. 90046, 33 Pa. Bull. 5176 (Sept. 26, 2003) (the provisions for Lawrence County, Pennsylvania are provided as an example).

[viii]*Id.*

[ix]ALA. CODE § 6–1–3 (LexisNexis Supp. 2012) The statute directs the Alabama Supreme Court to adopt guidelines "to promote the prompt, efficient, and cost-effective resolution of civil actions" for actions where amount in controversy does not exceed $50,000. *Id.* Such guidelines have yet to be adopted.

[x]*Id.* § 6–1–3(a).

[xi]Information here is provided for Maricopa County (i.e., Phoenix and vicinity). "Short trials" are also available in Pima County, and "summary jury trials" are available in Pima, Cochise, and Yavapai Counties. *See, e.g.*, PIMA CNTY. (ARIZ.) SUPER. CT. LOC. R. 4; COCHISE CNTY. (ARIZ.) SUPER. CT. LOC. R. 12; YAVAPAI CNTY. (ARIZ.) SUPER. CT. LOC. R. 19.

[xii]ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf.

[xiii]*Id.*

[xiv]*Id.*

[xv]*Id.*

[xvi]CAL. CIV. PROC. CODE § 630.03(a), (f) (West 2011).

[xvii]*Id.*

[xviii]*Id.* § 630.07(a).

[xix]*Id.*

[xx]Colorado simplified procedure is automatic for cases seeking less than $100,000 in damages, unless a party makes a timely election of exclusion. COLO. R. CIV. P. 16.1(b), (d). Parties seeking damages over $100,000 may opt into the procedure. *Id.* 16.1(e).

[xxi]*Id.*

[xxii]*Id.*

[xxiii]*Id.* 16.1(b). The cap does not apply to causes seeking more than $100,000 that have opted into the procedure. *Id.*

[xxiv]FLA. STAT. ANN. § 45.075 (West 2006).

[xxv]*Id.*

[xxvi]*Id.*

[xxvii]GA. UNIFORM R. DISPUTE RESOLUTION PROGRAMS, app'x A, 2.5.

[xxviii]A party may make a motion to the court to refer the case to summary jury trial. *Id.* The Rules do not list summary jury trial, however, as a type of proceeding to which a judge can refer a case, unless it is "by category." *Id.* 2.2.

[xxix]"The advisory jury verdict . . . is intended to provide the starting point for settlement negotiations." GA. ALT. DISPUTE RESOLUTION R. I.

[xxx]GA. UNIFORM R. DISPUTE RESOLUTION PROGRAMS, app'x A, 2.1.

[xxxi]IND. ALT. DISPUTE RESOLUTION R. 5.2.

[xxxii]*Id.* 5.3.

[xxxiii]*Id.* 1.3(D) ("After an advisory verdict from the jury, the presiding official may assist litigants in a negotiated settlement of their controversy.").

[xxxiv]*Id.* 4.2.

[xxxv]*Id.*

[xxxvi]*Id.* The court may select a case for mini trial, though a party may object, and the court will then rule on whether mini-trial appropriate in light of objection. *Id.*

[xxxvii]*Id.* 1.3(C).

[xxxviii]*Id.* 5.2.

[xxxix]MINN. GEN. R. PRAC. 114.04 (a), (b).

[xl]*Id.* Summary jury trial is one of the designated nonbinding ADR processes that a court may order parties to undergo. *Id.* 114.04(b).

[xli]*Id.* 114.02(a)(3).

[xlii]NEB. REV. STAT. § 25–1155 (2008).

[xliii]*Id.*

[xliv]*Id.* §§ 25–1155 to –1157. Section 1155 provides that parties may enter into a stipulation concerning the use or effect of the summary jury verdict. *Id.* 25–1155.

[xlv]*Id.*

[xlvi]Cases subject to mandatory, court-annexed arbitration in which a party has requested a trial *de novo*, and cases that entered into the mediation program in lieu of arbitration, where such mediation did not resolve the case, shall enter the short-trial program. NEV. SHORT TRIAL R. 4(a)(1)–(2), *available at* http://www.leg.state.nv.us/courtrules/NSTR.html. Other cases may voluntarily enter the program on stipulation of the parties; where a case would qualify for a court-annexed arbitration program, a short trial can substitute in lieu of such arbitration. *Id.* 4(b)(1)–(2).

[xlvii]*Id.*

[xlviii]*Id.* 32.

[xlix]*Id.* 1(a).

[l]*Id.* 26.

[li]N.H. SUPER. CT. R. 171 (a).

[lii]*Id.*

[liii]*Id.* 171 (j), (l).

[liv]The court must be satisfied that the case: (1) is not one in which the credibility of a witness is likely to be determinative; (2) the case will not set a precedent, but simply requires the application

of existing law; and (3) the case will be in trial readiness and all discovery shall have been completed. *Id.* 171(a).

[lv]N.Y. C.P.L.R. § 3031 (CONSOL. 2002).

[lvi]*Id.*

[lvii]"Summary jury trials" are now available in counties throughout the state of New York, governed by rules issued by the local trial court, or in some cases, by the appellate division judicial department. N.Y. CNTY. (N.Y.) STATEMENT OF JURY TRIAL PROC. The rules governing summary jury trials in New York County (i.e. the borough of Manhattan), are provided as an example.

[lviii]*Id.* ¶ 1.

[lix]*Id.*

[lx]*Id.* ¶ 2. The parties may enter into a high/low agreement. *Id.*

[lxi]Parties may agree to a summary bench trial or summary jury trial under North Carolina Mediated Settlement Conference Rule 13 in lieu of mediated settlement conference. N.C. SUPER. CT. MEDIATED SETTLEMENT CONF. R. 10(B)(3).

[lxii]*Id.*

[lxiii]*Id.* 13(C).

[lxiv]N.C. SUPER. & DIST. CTS. R. 23.

[lxv]*Id.*

[lxvi]*Id.*

[lxvii]N.D. R. CT. 8.8(a), (a)(1), (a)(1)(E). Parties are encouraged to use Alternative Dispute Resolution, and must discuss as part of pretrial preparations. *Id.* Summary jury trial is one of several Alternative Dispute Resolution options provided. *Id.*

[lxviii]*Id.* 8.8(b).

[lxix]WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(A).

[lxx]*Id.*

[lxxi]*Id.*

[lxxii]*Id.* 7.12(B).

[lxxiii]OR. UNIF. TRIAL CT. R. 5.150(1).

[lxxiv]*Id.* 5.150(1)(a).

[lxxv]*Id.* 5.150(1).

[lxxvi]LAWRENCE CNTY. (PA.) R. CIV. P. L320.1(b).

[lxxvii]*Id.* L320.1(c).

[lxxviii]*Id.* L320.2(b).

[lxxix]*Id.* L320.1(a).

[lxxx]Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[lxxxi]*Id.*

[lxxxii]*Id.*

[lxxxiii]*Id.*

[lxxxiv]TENN. SUP. CT. R. 31 § 3(b).

[lxxxv]*Id.* (allowing court to order participation on motion of a party, or upon its own initiative and with the consent of all parties, suggests that involuntary referral to summary jury party is possible if motion is made by one party).

[lxxxvi]*Id.* 31 § 2(q).
[lxxxvii]TEX. CIV. PRAC. & REM. CODE ANN. § 154.024(a) (West 2011).
[lxxxviii]*Id.*
[lxxxix]*Id.* § 154.024(d).
[xc]*Id.* § 154.026(e).
[xci]TEX. R. CIV. P. 169(a)(1).
[xcii]*Id.* 169(c) (suit removable upon motion and showing of good cause, or subsequent pleading for relief beyond scope of process).
[xciii]*Id.* 169(a).
[xciv]*Id.* 169(b).
[xcv]UTAH CODE JUD. ADMIN. R. 4–501(1).
[xcvi]*Id.*
[xcvii]*Id.* (expedited jury trial available if jury trial demanded under UTAH R. CIV. P. 38).
[xcviii]UTAH CODE ANN. § 78B–3–903(6)(d) (LexisNexis 2012).
[xcix]VA. CODE ANN. § 8.01–576.1 (2007).
[c]*Id.*
[ci]*Id.* § 8.01–576.3.
[cii]*Id.* § 8.01–576.1.
[ciii]ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDisputeResolution/docs/shortTrialAdminProcedures.pdf.
[civ]*Id.* at 2.
[cv]*Id.*
[cvi]*Id.*
[cvii]JUD. BRANCH OF ARIZ. IN MARICOPA COUNTY, SHORT TRIAL PROGRAM BENCHBOOK, 4 (Mar. 21, 2011), *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialBenchBook.pdf .
[cviii]CAL. R. CT. 3.1546 (The presiding judge is responsible for the assignment of a judicial officer to conduct an expedited jury trial.).
[cix]CAL. CIV. PROC. CODE § 630.01(a) (West Supp. 2013).
[cx]*Id.* § 630.04(a). Parties may stipulate to a jury of fewer. *Id.*
[cxi]*Id.* § 630.07(b). Parties may stipulate to another number. *Id.*
[cxii]*Id.* § 630.04(b). An additional challenge may be granted to each side if more than two. *Id.*
[cxiii]CAL. R. CT. 3.1549 ("Approximately one hour will be devoted to voir dire, with 15 minutes allotted to the judicial officer and 15 minutes to each side.").
[cxiv]FLA. STAT. ANN. § 45.075(4) (West 2006).
[cxv]*Id.* § 45.075(7).
[cxvi]GA. ALT. DISPUTE RESOLUTION R. I.
[cxvii]*Id.*
[cxviii]IND. ALT. DISPUTE RESOLUTION R. 1.3(D), 5.7 (qualification for neutral presiding officials and procedure for court to assist in selection of neutral presiding official, if the parties are unable to agree).

[cxix] *Id.* 1.3(D).

[cxx] *Id.* 5.4.

[cxxi] Jurors are first to seek unanimous or consensus verdict. *Id.* If one is not reached in two hours, jurors are to be instructed to return separate and individual verdicts. *Id.*

[cxxii] *Id.*

[cxxiii] *Id.* 1.3(C). Mini-trial is presented to "senior officials who are authorized to settle the case. . . . Following the presentation, the officials seek a negotiated settlement of the dispute." *Id.*

[cxxiv] MINN. GEN. R. PRAC. 114.02(a)(3).

[cxxv] *Id.*

[cxxvi] NEB. REV. STAT. § 25–1156(3) (2008) ("[J]udge need not preside . . . but may give the jury written or oral instructions on the applicable law following the presentation . . . .").

[cxxvii] *Id.* § 25–1156(1).

[cxxviii] *Id.*

[cxxix] Jury to return consensus verdict or anonymous individual verdicts. *Id.* § 25–1156(6).

[cxxx] *Id.* § 25–1156(1).

[cxxxi] NEV. SHORT TRIAL R. 3(a). Parties may stipulate to a particular judge, otherwise the initial judge will randomly select names of three qualified judges and allow each side to strike one. *Id.* 3(a)(1)–(2). Judges pro tempore must be active members of the state bar with judicial or civil litigation experience. *Id.* 3(c).

[cxxxii] Within short-trial procedure, demand for jury trial must still be timely and appropriately made. *Id.* 4(d).

[cxxxiii] Default is jury of four members, parties may stipulate to jury of four or six. *Id.* 22. Short-trial jury of eight authorized on a showing of good cause. *Id.*

[cxxxiv] *Id.* 23.

[cxxxv] *See* N.H. SUPER. CT. R. 171(i) (The judge is to give a jury charge at the conclusion of presentation.).

[cxxxvi] *Id.*

[cxxxvii] *Id.* 171(d). Parties may stipulate to fewer. *Id.*

[cxxxviii] *Id.* 171(j). The jury is to be encouraged to return a consensus verdict as opposed to individual verdicts. *Id.* Parties may stipulate that a consensus verdict will be binding. *Id.* 171(l).

[cxxxix] *Id.* 171(d).

[cxl] N.Y. C.P.L.R. § 3031 (CONSOL. 2002).

[cxli] *Id.*

[cxlii] N.Y. CNTY. (N.Y.) STATEMENT OF JURY TRIAL PROC., doc. 1, ¶ 1.

[cxliii] No number of jurors specified in New York County rules. Bronx County rules, however, specify that the jury is to consist of six jurors and one alternate unless the parties agree otherwise. *See* BRONX CNTY. (N.Y.) FILING R. SUMMARY JURY TRIAL PROCESS 8.

[cxliv] Not specified in New York County rules. Bronx County requires agreement of 5 of 6 jurors. *Id.* 12.

[cxlv] N.Y. CNTY. (N.Y.) STATEMENT OF JURY TRIAL PROC., doc. 1, ¶ 7.

[cxlvi] *See* BRONX CNTY. (N.Y.) FILING SUMMARY JURY TRIAL PROCESS 8 (Court to allow each side ten minutes for voir dire and to exercise two peremptory challenges.).

[cxlvii] N.C. SUPER CT. MEDIATED SETTLEMENT CONF. R. 13(A).

[cxlviii] *Id.* 13 (introduction to rule).
[cxlix] *Id.* 13(E).
[cl] *Id.* 13(H).
[cli] *Id.*
[clii] N.D. R. CT. 8.8(a)(1)(E).
[cliii] The rule suggests that a summary jury be "small in number" and "sometimes [use] expert-jurors." *Id.*
[cliv] The rule indicates that judge will be available to entertain objections during trial. WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(I).
[clv] *Id.* 7.12(E).
[clvi] *Id.*
[clvii] *Id.* 7.12(K).
[clviii] *Id.* 7.12(E).
[clix] References to "presiding judge" suggest that he/she will preside over trial. *See, e.g.*, OR. UNIF. TRIAL CT. R. 5.150(2).
[clx] *Id.* 5.150(1), (1)(a).
[clxi] OR. REV. STAT. §§ 5.110, 10.020 (2011).
[clxii] LAWRENCE CNTY. (PA.) R. CIV. P. L320.2(d).
[clxiii] *Id.*
[clxiv] *Id.* L320.2(g).
[clxv] *Id.* L320.3(a)–(m).
[clxvi] Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).
[clxvii] *Id.*
[clxviii] Juries to consist of "no more than six (6) jurors." *Id.*
[clxix] *Id.*
[clxx] TENN. SUP. CT. R. 31 § 2(q).
[clxxi] *Id.*
[clxxii] TEX. CIV. PRAC. & REM. CODE ANN. § 154.024(b) (West 2011).
[clxxiii] *Id.* If a neutral third party is chosen to preside, that party may issue an advisory opinion. *Id.*
[clxxiv] *Id.* § 154.026(c).
[clxxv] *Id.*
[clxxvi] TEX. R. CIV. P. 169(d)(3). Time spent on certain matters, such as challenges for cause under Texas Rule of Civil Procedure 228, are not included in the eight-hour-per-side limit, which can be extended to twelve hours per side on showing of good cause. *Id.*
[clxxvii] UTAH CODE JUD. AMIN. R. 4–501(2)(B).
[clxxviii] *Id.*
[clxxix] Parties may stipulate to allowing a verdict of four jurors. *Id.*
[clxxx] *Id.* 4–501(2)(C)–(D).
[clxxxi] *See* VA. CODE ANN. § 8.01–576.2 (2007).
[clxxxii] *Id.*
[clxxxiii] *Id.*

[clxxxiv]ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf.

[clxxxv]CAL. R. CT. 3.1547(a)(1). The court has discretion to allow a later filing. *Id.*

[clxxxvi]*Id.* 3.1547(b)(1)–(3). Parties may stipulate in proposed consent order to modifications of timelines for pretrial submissions, limits to number of witnesses and expert witnesses, and statutory or rule provisions regarding exchange of expert witness information and presentation of such testimony. *Id.*

[clxxxvii]*Id.* 3.1548(f).

[clxxxviii]*See* COLO. R. CIV. P. 16.1(e). "At issue" is defined by COLO. R. CIV. P. 16(b)(1) as being "such time as all parties have been served and all pleadings permitted . . . have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court may direct." *Id.*

[clxxxix]*Id.* 16.1(d).

[cxc]*Id.* 16.1(a)(2) (describing general disallowance of traditional discovery devices); *see also id.* 16.1(k) (excluding cases in simplified procedure from standard discovery rules); *id.* 16.1(k)(9) (providing for voluntary discovery by agreement, for which costs cannot be recovered, which may not be the subject of motions to the court, and which may not be the grounds for seeking a continuance).

[cxci]The sixty-day window starts from the court's adopting the joint agreement for expedited trial. FLA. STAT. ANN. § 45.075(1) (West 2006). Interrogatories and requests for production are to be served within ten days of such adoption, and responded to within twenty days after receipt. *Id.* § 45.075(2).

[cxcii]*Id.* § 45.075(5) ("The case may be tried within 30 days after the 60-day discovery cutoff, if such schedule would not impose an undue burden on the court calendar.").

[cxciii]IND. ALT. DISPUTE RESOLUTION R. 4.2. The fifteen-day window starts "after the period allowed for peremptory change of venue under Trial Rule 76(B) has expired."

[cxciv]*Id.*

[cxcv]*See id.* 4.3 ("When a case has been assigned for a mini-trial, it shall remain on the regular docket and trial calendar of the court. The court remains available to assist and rule on discovery [issues.]").

[cxcvi]*See id.* 5.2.

[cxcvii]*Id.* 5.3(A)(3).

[cxcviii]*Id.* 5.3(B)(3).

[cxcix]If a short trial is sought in lieu of mandatory, court-annexed arbitration, the demand to enter the short-trial program must be made before conference required under Nevada Arbitration Rule 11; otherwise, the rules concerning the election of the expedited procedure are not specified. NEV. SHORT TRIAL R. 4(b). Regardless of the above, various time limits apply to making a demand for a jury trial within short trial program, along with applicable juror fees. *See id.* 4(d)(1)–(3).

[cc]For "trial de novo" and unsuccessful mediation cases, a request for removal must be filed and served no later than ten days after service of request for trial de novo or mediator's report, as applicable. *Id.* 5(a)(1)–(2). Party seeking removal from short-trial program is responsible for paying to clerk the amount equal to fees that would foreseeably have been paid to jurors. *Id.* 5(a).

[cci] *Id.* 10.

[ccii] *Id.* 12. The date is also to be within 240 days after filing of any written stipulation entering case into short-trial program. *Id.*

[cciii] Court is to notify counsel at least fifteen days prior to date for summary jury trial. N.H. SUPER. CT. R. 171(c)(1). Counsel is to submit proposed jury instructions to court and opposing counsel no later than five days before date set for hearing. *Id.* 171(e).

[civ] N.Y. C.P.L.R. 3035(a) (CONSOL. 2002).

[cv] *Id.* 3036(6). The "note of issue" may be served and filed by any party after completion of certain procedures. *See id.*

[cvi] *See, e.g.*, N.Y. CNTY. (N.Y.) STATEMENT OF SUMMARY JURY TRIAL PROC. doc. 1, ¶ 6; BRONX CNTY. (N.Y.) FILING R. SUMMARY JURY TRIAL PROCESS 11.

[cvii] *See* N.C. SUPER. & DIST. CTS. R. 23.

[cviii] WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(C).

[cix] OR. UNIF. TRIAL CT. R. 5.150(4)(f) (discovery to be completed no later than twenty-one days before trial date). Parties may agree to an earlier date in writing. *Id.* 5.150(3)(b). All discovery requests must be served no later than sixty days before the trial date. *Id.* 5.150(4)(e).

[cx] OR. UNIF. TRIAL CT. R. 5.150(2)(b) (judge to set date for pretrial conference, which is to be no later than fourteen days before trial).

[cxi] *See id.* (judge to set "date certain" for trial which is not to be later than four months from the date of the order).

[cxii] *See* Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389 (S.C. Mar. 7, 2013).

[cxiii] *Id.* ¶ 6(b).

[cxiv] *Id.* ¶ 5.

[cxv] *See* TEX. R. CIV. P. 169.

[cxvi] *Id.* 169(c)(2).

[cxvii] *Id.* 190.2(b)(1).

[cxviii] *Id.* 169(d)(2). The discovery period is defined by TEX. R. CIV. P. 190.2(b)(1). *Id.* The date may be continued twice, not to exceed sixty days. *Id.*

[cxix] UTAH CODE JUD. ADMIN. R. 4–501(1).

[cxx] *Id.* 4–501(5)(B).

[cxxi] *Id.* 4–501(5)(C). The trial date is not to be postponed "except in extreme circumstances that could not have been foreseen." *Id.*

[cxxii] VA. CODE ANN. § 8.01–576.2 (2007).

[cxxiii] CAL. R. CT. 3.1547(b)(1)–(3) (parties may stipulate in proposed consent order to modifications of timelines for pretrial submissions; limits to number of witnesses and expert witnesses; statutory or rule provisions regarding exchange of expert witness information; and presentation of testimony by such witnesses).

[cxxiv] COLO. R. CIV. P. 16.1(k) (exclusion of various discovery devices); 16.1(k)(4)–(5) (depositions allowed to be presented at trial in lieu of witness' live testimony, and for authenticating documents from a non-party); 16.1(k)(9) (allowing for additional discovery if voluntarily agreed to by parties).

[ccxxv]*See id.* 16.1(k) (prohibiting use of interrogatories, depositions, requests for production, and requests for admission except where explicitly authorized); 16.1(k)(9) (allowing for additional discovery if voluntarily agreed to by parties).

[ccxxvi]*See id.* 16.1(k)(1)(A)–(B) (listing mandatory disclosures in all cases, additional disclosures in personal injury and employment actions, and providing for requests for additional disclosures).

[ccxxvii]FLA. STAT. ANN. § 45.075(3) (West 2006).

[ccxxviii]NEB. REV. STAT. § 25–1156(4) (2008).

[ccxxix]*See* N.C. SUPER CT. MEDIATED SETTLEMENT CONF. R. 13(A)(1)–(6).

[ccxxx]N.H. SUPER. CT. R. 171(g).

[ccxxxi]*See* OR. UNIF. TRIAL CT. R. 5.150(4)(b).

[ccxxxii]*Id.* 5.150(4)(c)–(d).

[ccxxxiii]*Id.* 5.150(3)(a).

[ccxxxiv]*See id.* 5.5150(4)(a)(i)–(iii) (requiring disclosure of, among other information, potential witnesses, unprivileged documents, and insurance policies).

[ccxxxv]TEX. R. CIV. P. 190.2(b)(2). The time can be extended to ten hours per side by agreement of parties, and further with consent of the court. *Id.*

[ccxxxvi]*Id.* 190.2(b)(3)–(5). Interrogatories asking a party only to identify or authenticate documents do not go against the limit. *Id.* 190.2(b)(3).

[ccxxxvii]*See* ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf (language "encouraging" stipulations to evidence suggests standard rules of evidence and procedure apply absent stipulations);JUD. BRANCH OF ARIZ. IN MARICOPA COUNTY, SHORT TRIAL PROGRAM BENCHBOOK, 2 (Mar. 21, 2011), *available at* http://www.superiorcourt.maricopa.gov/SuperiorCourt/ AlternativeDisputeResolution/docs/shortTrialBenchBook.pdf (explaining process and procedures may be changed by stipulation with agreement by judge pro tempore).

[ccxxxviii]ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt. maricopa.gov/SuperiorCourt/AlternativeDispute Resolution/docs/shortTrialAdminProcedures.pdf.

[ccxxxix]*Id.*

[ccxl]*Id.*

[ccxli]*Id.*

[ccxlii]*Id.* Evidentiary notebooks "may include facts, photographs, diagrams, and other evidence." *Id.*

[ccxliii]*See* CAL. CIV. PROC. CODE §§ 630.02, .06 (West 2011).

[ccxliv]CAL. R. CT. 3.1550. The goal is to complete trial in a single day. *Id.* The parties may by stipulation alter time periods amongst themselves. CAL. R. CT. 3.1547(b)(4).

[ccxlv]*Id.* 3.1547(b)(2)–(3).

[ccxlvi]*Id.*

[ccxlvii]*See* COLO. R. CIV. P. 16.1(k)(7).

[ccxlviii]*See id.*

[ccxlix]*Id.* 16.1(i).

[ccl]FLA. STAT. ANN. § 45.075(13) (West 2006).
[ccli]*Id.* 45.075(6)–(9).
[cclii]*Id.* 45.075(11).
[ccliii]*Id.* 45.075(12).
[ccliv]*Id.* 45.075(10).
[cclv]IND. ALT. DISPUTE RESOLUTION R. 1.3(C).
[cclvi]*Id.* 1.3(D).
[cclvii]*See id.* 5.4. Jurors are to have up to two hours to reach a consensus verdict, followed by one hour to return separate and individual verdicts. *Id.*
[cclviii]In a Minnesota summary jury trial, counsel is to "present a summary of their position before a panel of jurors." MINN. GEN. R. PRAC. 114.02(a)(3). The degree to which this summary can include witnesses, reading of depositions, or other forms of evidence is not specified. *See id.*
[cclix]*Id.*
[cclx]*Id.*
[cclxi]*Id.*
[cclxii]NEB. REV. STAT. § 25–1156(2) (2008).
[cclxiii]*See id.* § 25-1156(4) ("The parties shall not present evidence but may present representations or summaries of evidence which would be adduced and admissible at trial.").
[cclxiv]*See id.*
[cclxv]*Id.* Any objections to evidence must be made prior to trial. *Id.*
[cclxvi]*See* NEV. SHORT TRIAL R. 15–19 (providing variations from the rules of evidence). In particular, parties may quote directly from depositions, interrogatories, etc. *Id.* 15. Various documents are admissible without authentication, except where stipulated by parties. *Id.* 16. The parties must create a pretrial memorandum, accompanied by any evidentiary objections. *Id.* 17. The parties also jointly create an "evidentiary booklet." *Id.* 18.
[cclxvii]*Id.* 21.
[cclxviii]*Id.* 19(a) (written report encouraged); *id.* 19(d) (no voir dire of expert); *id.* 19(e) ($500 cap on witness fee unless higher amount agreed to by parties).
[cclxix]*See supra* note cclxvi for summary of provisions.
[cclxx]N.H. SUPER. CT. R. 171(f).
[cclxxi]*Id.* ("All evidence shall be presented through the attorneys for the parties, who may incorporate arguments on such evidence in their presentations. . . . Counsel may only present factual representations supportable by reference to discovery materials . . . . Statements, reports and depositions may be read from, but not at undue length. Physical exhibits, including documents, may be exhibited during a presentation and submitted for the jury's consideration.").
[cclxxii]*Id.*
[cclxxiii]*Id.*
[cclxxiv]N.C. SUPER. CT. MEDIATED SETTLEMENT CONF. R. 13(F).
[cclxxv]*See id.*
[cclxxvi]*Id.*
[cclxxvii]*Id.*

[cclxxviii]N.C. SUPER. & DIST. CTS. R. 23 (order for summary jury trial may include "limitations on the amount of time provided for argument and presentation of witnesses" and "limitations on the method or manner of presentation of evidence").
[cclxxix]*Id.*
[cclxxx]*Id.*
[cclxxxi]*Id.*
[cclxxxii]N.D. R. CT. 8.8(1)(E).
[cclxxxiii]*Id.*
[cclxxxiv]N.Y. C.P.L.R. §§ 3035(b), 3036(1) (CONSOL. 2002).
[cclxxxv]*See id.* § 3035(c).
[cclxxxvi]N.Y. CNTY. (N.Y.) STATEMENT OF SUMMARY JURY TRIAL PROC., doc. 1 ¶ 8.
[cclxxxvii]*Id.*
[cclxxxviii]*Id.*
[cclxxxix]*See generally* WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12 (no mention on whether standard rules of evidence or procedure apply in situations not covered by above rule).
[ccxc]*Id.* 7.12(H).
[ccxci]*Id.* 7.12(G).
[ccxcii]*Id.*
[ccxciii]*Id.* (providing attorneys may summarize or quote directly from "depositions, interrogatories, requests for admissions, documentary evidence, and sworn statements of potential witnesses").
[ccxciv]*See* OR. UNIF. TRIAL CT. R. 5.150(3)(c) (providing parties may file a written agreement with the court including "[s]tipulations regarding the conduct of the trial, which may include stipulations for the admission of exhibits and the manner of submission of expert testimony").
[ccxcv]*See id.* 5.150(3).
[ccxcvi]*Id.*
[ccxcvii]*Id.*
[ccxcviii]*Id.*
[ccxcix]*See* LAWRENCE CNTY. (PA.) R. CIV. P. L320.2.
[ccc]*Id.* L320.2(e).
[ccci]*Id.*
[cccii]*Id.*
[ccciii]*Id.*
[ccciv]*See* Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, at ¶ 11 (S.C. Mar. 7, 2013) (suggesting evidentiary rules to modify by stipulation, including authentication of records and proof of lost income).
[cccv]*Id.* ¶ 10.
[cccvi]*Id.* ¶ 11(d).
[cccvii]*Id.* ¶ 11.
[cccviii]*Id.* ¶ 5.
[cccix]TENN. SUP. CT. R. 31 § 2(q).
[cccx]*See* TEX. R. CIV. P. 169. References to other provisions of Texas Rules of Civil Procedure indicate that the above apply except where specifically altered for expedited actions process. *See, e.g.*, TEX. R. CIV. P. 169(d)(1) (discovery to be governed by Texas Rule of Civil Procedure 190.2).

[cccxi]TEX. R. CIV. P. 169(d)(3) (court may extend to twelve hours upon motion and showing of good cause by party).

[cccxii]*Id.* 169(d)(5) (party not sponsoring expert may only challenge expert testimony as objection to summary judgment evidence or during trial on the merits; this paragraph does not apply to a motion to strike for late designation).

[cccxiii]UTAH CODE ANN. § 78B–3–905(1)–(2) (LexisNexis 2012) (any stipulation to relax the rules of evidence is not to affect the right of a party or witness to invoke privilege or other law protecting confidentiality).

[cccxiv]UTAH CODE JUD. ADMIN. R. 4–501(2)(E).

[cccxv]*Id.* 4–501(3)(C)(i).

[cccxvi]*Id.*

[cccxvii]*Id.* 4–501(3)(C)(i)–(vii), (4)(A)–(D).

[cccxviii]*See id.* 4–501(9)(C).

[cccxix]VA. CODE ANN. § 8.01–576.3 (2007).

[cccxx]*d.*

[cccxxi]*Id.*

[cccxxii]ARIZ. JUD. BRANCH MARICOPA CNTY. ALT. DISPUTE RESOLUTION: CIVIL SHORT TRIAL ADMIN. PROCEDURES FOR JUDGES *PRO TEMPORE*, *available at* http://www.superiorcourt.maricopa.gov/superiorcourt/alternativedispute resolution/docs/shorttrialadminprocedures.pdf.

[cccxxiii]CAL. CIV. PROC. CODE § 630.03(b)(1)–(2) (West 2011).

[cccxxiv]*See id.* § 630.09 (appeal or motion for new trial permitted for judicial or jury misconduct, corruption, fraud, or other undue means that prevented a party from having a fair trial; grounds and procedures for such circumstances specified in this section).

[cccxxv]COLO. R. CIV. P. 16.1(d) (simplified procedure is not to apply if a party files written election of exclusion within thirty-five days of case being "at issue").

[cccxxvi]*Id.* 16.1(*l*) (withdrawal permitted upon showing of substantially changed circumstances and good cause for timing of seeking withdrawal).

[cccxxvii]IND. R. ALT. DISPUTE RESOLUTION 4.2 (court to "promptly hear the objection and determine whether a mini-trial is possible or appropriate in view of the objection").

[cccxxviii]*Id.* 4.4(C) (proceedings of mini-trial covered by IND. EVID. R. 408 covering "settlement negotiations," and are deemed "privileged and confidential").

[cccxxix]*Id.* 5.6 (proceedings of trial covered by IND. EVID. R. 408 covering "settlement negotiations," and are deemed "privileged and confidential").

[cccxxx]MINN. GEN. R. PRAC. 114.08 (summary jury trial considered a "non-binding ADR process," evidence of which is deemed confidential); *see id.* 114.02(a)(3).

[cccxxxi]NEB. REV. STAT. § 25–1157 (2008).

[cccxxxii]*Id.*

[cccxxxiii]*See* NEV. SHORT TRIAL R. 5 (providing that a case may be removed for good cause if demand is "untimely" and suggests that removal may be automatic if demand is timely made); *see id.* 5(a)(1)–(2).

[cccxxxiv]*Id.* 5(b) (fee is to be based on the cost of holding a short jury trial, calculated on the basis of an eight-member jury; fee will be estimated at $1,000 unless parties stipulate to another amount).

[cccxxxv]*Id.* 33.

[cccxxxvi]N.H. SUPER. CT. R. 171(b) (objection to placement on summary jury trial list allowed within ten days of mailing of notice of such order; grounds for sustaining such objection not specified).

[cccxxxvii]*Id.* 171(k).

[cccxxxviii]*See* N.Y. C.P.L.R. § 3037 (CONSOL. 2002) (only certain matters appealable, questions of fact decided by judge to be upheld if there is "any substantial evidence" to support them).

[cccxxxix]*See* BRONX CNTY. (N.Y.) FILING R. SUMMARY JURY TRIAL PROCESS 11, 11 ¶ 6 ("A summary jury trial will be recorded by a court reporter unless waived by all parties.").

[cccxl]N.Y. CNTY. (N.Y.) STATEMENT OF SUMMARY JURY TRIAL PROC., doc. 1, ¶ 3 (motion for mistrial and retrial permitted on grounds of inconsistent verdicts or prejudicial conduct).

[cccxli]*See* N.D. CENT. CODE § 31–04–11 (2010) ("evidence of anything said or of any admission made" may not generally be disclosed). Exceptions exist in cases of crime, misconduct, breach of duty, issues with the validity of the agreement, or if all participants consent to disclosure. *Id. See also* N.D. R. CT. 8.8(d).

[cccxlii]WOOD CNTY. (OHIO) CT. COM. PL. GEN. R. 7.12(N).

[cccxliii]Order on Fast Track Jury Trial Process, Appellate Case No.: 2013–000389, ¶ 1 (S.C. Mar. 7, 2013).

[cccxliv]*Id.* ¶ 3, 14.

[cccxlv]TEX. R. CIV. P. 169(c)(1).

[cccxlvi]UTAH CODE ANN. § 78B–3–902 (LexisNexis 2012) (unless otherwise specified, laws governing civil actions and jury trials apply to expedited jury trials).

[cccxlvii]*See id.* § 78B–3–906(1)(a)–(d) (grounds for appeal include judicial or jury misconduct, corruption, fraud, or "to correct errors of law"); *id.* § 78B–3–906(2)(a)–(c) (post-trial motions relating to costs and attorney fees, to correct clerical errors, or to enforce a judgment).

[cccxlviii]*Evolution*, *supra* note vi, at 23.

[cccxlix]*Compare id.* at 72, *with id.* at 75 n.105 (noting that during 2009-2010, Los Angeles County held 507 civil jury trials and San Francisco County held 132).

[cccl]*Id.* at 72 n.104.

[cccli]*Promote E-Discovery Reform—Provide Data*, THE METRO. CORP. COUNSEL, Apr. 5, 2010, at 18 ("One of the unfortunate occurrences in Colorado is that the courts have never gathered any statistics to show how its simplified procedure rule works in practice . . . ."); *Annual Statistical Reports*, COLO. STATE JUDICIAL BRANCH, http://www.courts.state.co.us/Administration/Unit.cfm?Unit=annrep (last visited Oct. 26, 2013) (examination of these reports indicate that this continues to be the case).

[ccclii]Jury Innovations Comm., *Proposed Jury System Changes*, FLA. BAR NEWS (July 12, 2001), *available at* http://www.flcourts.org/gen_public/pubs/bin/juryinnovationsfinalreport.pdf.

[cccliii]HENRY P. TRAWICK, JR., TRAWICK'S FLORIDA PRACTICE AND PROCEDURE § 22:24 n.1 (2012 ed.) ("This statute [FLA. STAT. ANN. § 45.075] is an exercise in futility because (1) the Legislature has not and will not create enough judges to give the procedure effect; (2) few parties will stipulate to the time limits; (3) even fewer parties will agree to instructions; (4) no definition of plain language is given; (5) the parties can expedite most procedures by stipulation and do not do so; and (6) the statute is procedural and beyond the authority of the legislature.").

[cccliv]EDWARD K. ESPING, GEORGIA PROCEDURE § 9:9 (Westlaw through Sept. 2013).

[ccclv]David A. Domina & Brian E. Jorde, *Trial*: *The* Real *Alternative Dispute Resolution Method*, 14–25 n.57 (2010) (Presentation to the Nebraska Association of Trial Attorneys), *available at*

http://www.dominalaw.com/documents/Trial-The-Real-Alternative-Dispute-Resolution-Method.pdf.

[cccvi] *Evolution*, *supra* note vi, at 46.

[cccvii] *Id.* at 35; *id.* at 32 (as of summer 2011, Bronx County has devoted 2.5 full-time equivalent judges to conduct summary jury trials); *id.* at 35 (on the other hand, seven of New York's thirteen judicial districts reported less than thirty summary jury trials for the entire four-year period).

[cccviii] *Id.* at 58.

[cccix] *Id.* at 16.