



The Fast Track: Oregon's Expedited Civil Jury Trial Program

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Bemoaning the lack of civil jury trials has become a favorite pastime of litigators. The "vanishing jury trial" is discussed endlessly in circles of lawyers and judges in Oregon and throughout the country. With civil trials in decline, how will the next generation of trial lawyers gain the confidence or skills necessary to actually try a case? How will the next generation of trial lawyers thrill

their colleagues if they don't have trial war stories to share? One of Oregon's solutions is to put civil cases on the "fast track" to trial, giving young litigators the chance to use Irving Younger's ten commandments of



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cross examination rather than just reading about them.

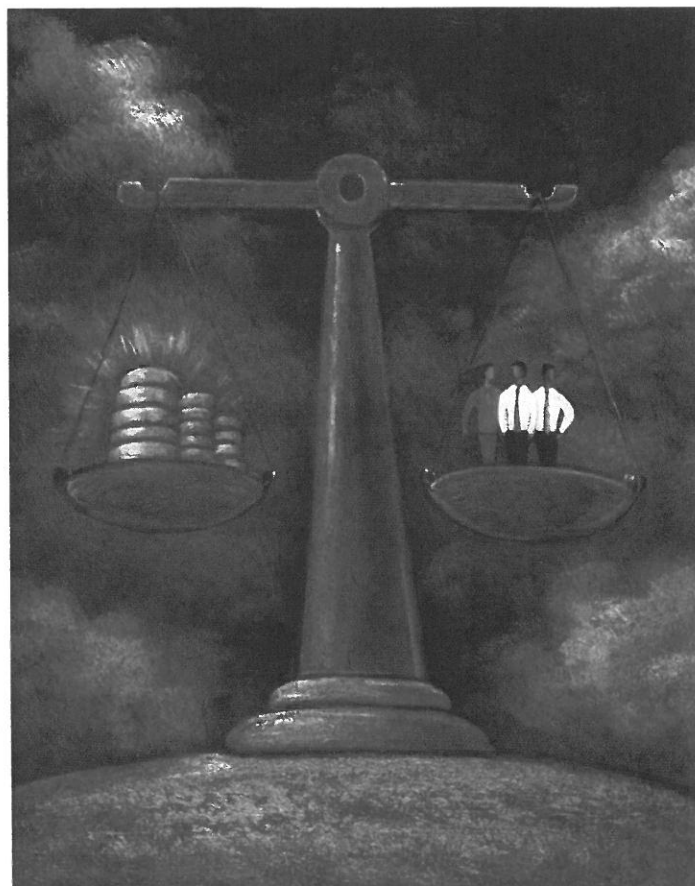
The most commonly mentioned factors contributing to the decline of civil jury trials are the expense, clients' risk adverseness, and the risk of liability for the opponent's attorneys' fees.¹ Given these factors, are young litigators being taught to be "trial avoiders" rather than "trial lawyers"? Oregon is hoping that isn't the case.

On May 6, 2010, Chief Justice Paul De Muniz adopted Uniform Trial Court Rule (UTCR) 5.150 "Expedited Civil Jury Cases." Since the 1998 consolidation of the limited jurisdiction district courts with the circuit courts resulted in the

loss of a quick and inexpensive route for parties to reach trial and for newer lawyers to gain real trial experience, the new, voluntary program set forth in UTCR 5.510 attempts to revive some of those opportunities.

Under the Expedited Civil Jury Case program, a civil case may be designated an expedited case by a joint motion of the parties. Designating a case as "expedited" falls within the discretion of the presiding judge and is, of course, subject to the availability of judges, staff, and courtrooms. If the judge grants the motion, a date-certain trial date will be set for no later than four months from the date of the order, and a pretrial conference will be set for no later than 14 days before trial. The rule asks the parties to pre-select this date-certain trial date and specify that in the motion.² All expedited civil jury case trials will use six jurors.

Before moving to designate a case as expedited, the first step should be to analyze whether the case is appropriate



given the rule's restrictions on discovery. The rule allows the parties to submit a written discovery agreement that provides a deadline by which discovery will be complete. This date must not be later than 21 days before trial. The discovery agreement may also reflect stipulations regarding the conduct of the trial, including the admission of exhibits and the manner of submission of expert testimony.

If the parties cannot reach agreement

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THE FAST TRACK continued from page 8

on discovery and therefore do not file a discovery agreement, the rule then places restrictions on the extent of discovery each party may conduct. After the request for an expedited designation has been made, each party can serve no more than one set of requests for production and requests for admissions and can take no more than two depositions. Additionally, the discovery requests must be served not later than 60 days before the trial date, and all discovery must be completed not later than 21 days before trial.

The rule addresses the fact that a party's failure to comply with discovery is often the basis for a motion to postpone trial. The rule specifically provides, "A party's failure to request or respond to discovery is not a basis for that party to seek postponement of the expedited case trial date." UTCR 5.150(6). The rule does not address, however, the consequences for failure to comply with discovery or the circumstances under which a motion for postponement would be granted.

The rule also seeks to streamline discovery of witnesses and pretrial motions. It requires the parties, within four weeks of the expedited case designation, to provide the names, addresses, and telephone numbers, if known, to opposing counsel of all lay witnesses that the party may use to support its claims. Additionally, a party may not file any pretrial motions unless given prior leave of court.

The program is aimed at the smaller, simpler types of cases that would regularly go into a mandatory arbitration program. However, there is no limit on the size of an eligible case. Once a case is designated as expedited, the case is exempted from mandatory arbitration and from all court rules requiring mediation or other forms of alternative dispute resolution.

Regardless of the size of the case, the program doesn't lend itself to procrastinators. It encourages attorneys to quickly

and actively engage in discovery, identify witnesses well in advance of trial, and to reach agreements with opposing counsel regarding discovery and trial procedures.

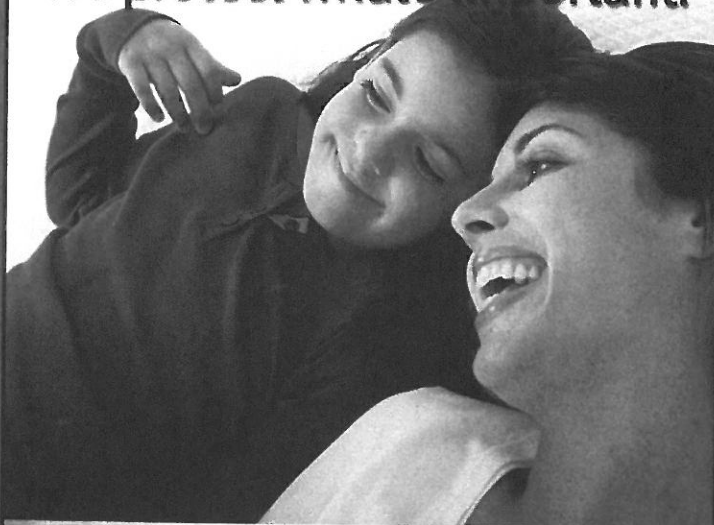
In conclusion, it remains to be seen how many defendants will seek to use this rule. The attraction of the rule to a plaintiff is clear: the chance for an early trial date. The primary potential benefits to defendants include a speedy resolution to disputes and a potential reduction in defense costs based on the expedited date trial and discovery limitations. ☛

Guidelines established by Multnomah County Circuit Court for the Expedited Civil Jury Case program are detailed on page 17, this issue.

Endnotes

- 1 "The Vanishing Civil Jury Trial in Multnomah County; Report of the Presiding Judge's ADR/Vanishing Civil Jury Trial Committee," November 6, 2009, pg. 12.
- 2 UTCR Form 5.150.1a is an example of a Form for Motion for an Expedited Civil Jury Case Designation. UTCR Form 5.150.1b is the form Order Designating an Expedited Civil Jury Case.

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