

Unlawful Detainer Trials



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MARCH 2017

Preparing for Trial



- Pretrial Considerations
- Discovery
- Investigation and evidence gathering
- Jury Trial v. Bench Trial

Pretrial Considerations

- Trial can be set within 20 days after a request to set trial is filed.
- Initiate service of discovery as soon as feasibly possible!
- Jury Trial Demand:
 - Must be filed within 5 days of the Notice of Trial date. C.C.P. § 631(f)(4)
 - Jury Fees: \$150 at least 5 days before trial. C.C.P. § 631(b)

Your Discovery Tool Box

Types of Discovery:

- Written Interrogatories
 - Judicial Council Form UD-106
 - Special Interrogatories
- Demand for Inspection of Documents
- Request for Admissions
- Depositions
 - Scheduled w/in 5 days of the Notice but no later than 5 days before Trial.

Time Limitations:

- Discovery must be completed 5 days before the date of Trial
- Responses due w/in 5 days for personal service, 10 days for mailing, 7 days for overnight
- Motions to Compel may be filed at any time upon 5 days notice.

Using Discovery Effectively



- **Serve as a Matter of Routine:** At the very minimum, Form Interrogatories and Requests for Inspection of Documents should be served once an Answer is filed.
- **Costs:** Cost of discovery should be a consideration if uncertain on chances of prevailing at trial.
 - Can defer some costs: Court Reporters Board of CA has a transcript reimbursement fund (covers expedited fees).
- **Timing:** All discovery must be completed 5 days prior to trial. Keep in mind that for most cases you will be operating on an approximate three-week deadline (if you're lucky).

HYPO – The Gomez Family



Juan Gomez and Maria Gomez and their three minor children have been living in their two-bedroom apartment for 10 years. They live in a 15-unit apartment complex and their rent is currently \$850/month. Mr. & Mrs. Gomez never signed a written lease. They have not been asked to sign a rental agreement since they originally moved in. Two years after they moved in, a relative gifted one of the children a puppy. The resident manager for the building accepted their rent every month thereafter and never mentioned anything to the Gomez family about their new dog.

Two years ago, the building was sold to a new owner. The resident manager had every tenant fill out and sign an Estoppel Certificate. Mr. Gomez had one of his teenage children help him fill out the form. On the Estoppel Certificate he listed every member of his family by name, how much he pays in rent, that he never had a lease agreement in the past, and that he had one pet dog.

A month ago, after they had already paid rent for the month, Mr. Gomez received a Three-Day Notice to Cure or Quit alleging that they have an unauthorized pet. The Notice cites a lease provision prohibiting pets and includes the names of several alleged witnesses including the resident manager. The Notice states that they must “cure” by removing their dog from the premises.

Mr. Gomez denies all the allegations and does not remove the dog. The resident manager refused their rent for the following month and the Gomez family is still living in their apartment. Both Mr. Gomez and Mrs. Gomez have now been named in an unlawful detainer action.

Your Discovery Plan

What are your defenses?

What evidence do you need to dispute Plaintiff's prima facie case?

What evidence do you need to establish affirmative defenses?

Case Example:

- **Waiver:**
 - Admissions, Form Interrogatories, Deposition of resident manager
 - Document demand for rent ledger, cashed payments, receipts, copies of alleged “lease agreement”
- **Unauthorized Pet:**
 - Deposition of resident manager
 - Document demand for copy of alleged “lease agreement”

Investigation & Evidence Gathering



- Visit the premises
 - Take photos
 - Interview neighbors and household members
 - Check the common areas, layout of building
- Code Enforcement/Government Agencies
 - Copies of Orders and inspection reports (certified)
 - Interview inspectors/investigators
- Give your client “homework”
 - Make a list of additional documents (e.g. receipts, invoices for repairs, photos, etc.) with a deadline
 - Lease Agreement
 - Prior notices and correspondence to/from landlord



Jury Trial vs. Bench Trial

- Generally: Jury trial is always preferred.
- Waiver: Fail to timely request; failure to post fees; failure to appear; or written/oral waiver.
- When to consider waiving jury trial:
 - Credibility/Likability of the parties
 - Technicality of defense(s)
 - “Damage Control”
 - Risk of attorney’s fees award
 - Is there time?
 - Client concerns

Day of Trial



- Witness Management
- Trial Documents
- Assignment to Trial



Witness Management

- Subpoena Non-party Witnesses
 - Health department inspectors
 - Resident manager
 - Maintenance workers
 - Other tenants
- Notice to Appear for party witnesses

Trial Documents



- Trial Brief
- Statement of the Case
- Motions in Limine
- Jury Instructions
- Jury Verdict Form
- Notices to Appear
- Subpoenas
- Proposed Voir Dire questions
- Witness List
- Exhibit List & copies of exhibits



Jury Instructions

- Standard CACI Instructions
- Special Instructions
- How will the set of jury instructions be finalized?

Case Example: The Gomez Family



What special jury instructions would you need?

- Waiver instruction
- Instruction explaining concept of trivial breach
- Additional requirements to evict for breach of lease imposed by local or federal law
- Dominant Motive (if in rent control jurisdiction)
- Others?

Motions in Limine (MIL)



- MIL's can make or break your case. Get argument and rulings on the record
- Plaintiff's attorneys rely heavily on MIL's
- Common Plaintiff's MIL's:
 - Exclude habitability evidence bc tenant failed to provide actual notice
 - Prohibit evidence of a retaliation defense in non-payment case
 - In cases involving retaliation/discrimination, a motion to shift burden of proof regarding Plaintiff's dominant motive from Plaintiff to Defendant
- Common Defendant's MIL's:
 - Exclude evidence of behavior allegations not included in the notice
 - Exclude evidence not turned over during discovery

Case Example: The Gomez Family



- What MIL's would you need?
- To trial brief or not to trial brief?
- Other logistics to consider at this time:
 - Court reporter
 - Interpreter

Assignment to Trial



- Master Calendar
 - In some jurisdictions you will report to the presiding judge (PJ) on the day of trial. PJ will likely require parties to discuss settlement. If case does not settle, PJ will assign case out to trial, often forthwith. Be ready to start your trial.
- Commissioner
 - If parties stipulate, case may be tried before a judge pro tem or commissioner. Think twice before stipulating.
- CCP § 170.6 Challenge
 - Each side has the right to exercise one peremptory challenge to the trial judge, which must be raised **at the time of assignment**. Oral or written, no specific cause need be alleged or proved.
 - Tactical Considerations: alienating judges, will next assignment be worse?

Conducting Your Trial



- Final Pre-Trial Conference
- Opening Statements
- Pretrial Motions
- Jury Selection
- Plaintiff's Case
 - Cross exam of Plaintiff's Witnesses
- Defendant's Case
 - Direct exam of Defendant's Witnesses
- Closing Argument

Pre-Trial Considerations



- Logistics
 - Courtroom schedule, trial time estimates, jury fees
- Review of Pleadings and Issues
 - Can any issues be narrowed by stipulation?
 - What issues remain to be tried?
- Witnesses
 - Order, estimated time
- Discuss Motions in Limine
 - Briefing/argument schedule
- Jury Selection
- Settlement Possibilities?



Burden of Proof

- Judgment will be entered for the party who proves his or her case or defense by a preponderance of the evidence. (Evidence Code § 115)



Pre-Trial Motions

- **Motions for Judgment on the Pleadings**
 - Can be made on day of trial, orally or in writing
 - Examples: Failure to include language required by local ordinance or CCP 1161(2), late fees.
- **Motions to Bifurcate**
 - Have judge decide legal issues before deciding to proceed to jury trial. Can help with settlement.
- **Motion to Strike Jury Trial**
- **Motion to Strike Second Amended Complaint**



Jury Selection

- Establish a system (seating chart)
- Voir Dire Questions
 - Begin telling your story, establish your narrative.
 - Avoid pitfalls: being boring, asking repetitive questions, being boring
 - Rehabilitate good jurors
 - If you know other side will challenge a juror, get as much out of them as possible
- Who is your ideal juror?
- Landlords on your jury can be good.
- Challenges for Cause
- Peremptory Challenges

Case Example: The Gomez Family



- Who is your ideal juror?
- What types of questions should you ask?
- Would you keep a landlord on your jury?

Opening Statement - Tips



- Identify your case theme.
- Outline the facts you intend to prove at trial.
- Avoid stating or referring to evidence that you know is not admissible or you will not be able to prove.
- An opening statement may not be used to argue the case to the jury or discuss issues of law.
- Use an outline – **NO READING TO THE JURY**
- Speak naturally, no legalese
- Consider visual aids (diagram, photos)
- Be concise and clear.

Plaintiff's Case



- Plaintiff must establish:
 - Ownership or authority over the property
 - Terms of the agreement
 - Service of a valid notice
 - Expiration of the notice (or termination of the tenancy by other means)
 - Tenant's continued possession of the premises

Case Example: The Gomez Family



- In the Gomez case, one would expect the Plaintiff's presentation to include:
 - Authentication of any lease agreement and estoppel certificate
 - Witness testimony regarding the presence of the dog (likely by resident manager)
 - Service of the Three-Day Notice to Cure or Quit
 - Witness testimony regarding the family's continued occupancy (likely by resident manager)

Cross Exam of Plaintiff's Witnesses



- Plan the “story arch” you want this witness to tell the jury
- Outline leading questions and anticipated answers for key points
- Think on your feet
 - Pay attention to direct testimony and add as necessary
 - Listen to the witness's answers to your questions
- Organize exhibits into folders or trial binder sections
- Be polite and respectful, no matter what

Motion for Nonsuit?



- After Plaintiff's presentation, if lacking elements of a *prima facie* case, you may move for a judgment of nonsuit.
 - challenge to the sufficiency of plaintiff's evidence at an early stage of trial without waiving the right to present a defense
 - like a demurrer to Plaintiff's evidence
- CCP § 581c(a)

Defendant's Case



- Use evidence to illustrate your case theme
- Start strong and end strong
 - Order of exhibits and witnesses
- Usually your client is your star witness
 - Think about the strength of their presentation, how can you support their credibility
 - PRACTICE is key, for both direct and cross

Case Example: Defense for the Gomez Family



- **Witnesses:**
 - Resident manager re prior knowledge of dog
 - Neighbors who also have dogs
 - Neighbors who can testify to lack of barking, damage, or nuisance by dog
 - Mr. and/or Mrs. Gomez (with interpreter)

Case Example: Defense for the Gomez Family



- Documents:
 - Photos of the premises that show no damage caused by the dog or other tenants with dogs
 - Copy of estoppel certificate that disclosed dog
 - Rent receipts to show continuous acceptance of rent

Closing Argument



- Re-emphasize the case theme
- Review evidence and state the conclusions the jury should draw from it
- Use exhibits, visual aides as appropriate
- Keep it short

Motion for Directed Verdict



- Either Plaintiff or Defendant may move for a directed verdict at the close of the evidence. CCP § 630(a)
- Similar to Motion for Nonsuit (like a demurrer)
- May be made orally and without notice
- Outside presence of the jury

Jury Verdict



- Nine out of 12 jurors must agree
- Special verdict should be requested prior to argument
 - Provide a special verdict form that includes specific findings on ultimate facts
 - Useful for determining available future claims or defenses, appeal record

Decision in Court Trial



- **Statement of Decision**
 - Explains the factual and legal basis for the Court's decision (CCP § 632)
 - Timely request for short trials: prior to submission of the matter for decision
 - May be requested in writing or verbally on the record
 - Necessary for most appeals

Case Example:

What can the Gomez Family win?



- Verdict for Defendants could include:
 - Possession of the premises retained by the Gomez Family (tenancy resumes)
 - The right to pay the previously refused rent
 - Attorney's fees, if the verdict includes finding of retaliatory motive, or if provided in the lease
 - Costs (unless waived by the Court)

QUESTIONS?



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