Judge Elaine Mandel
LOS ANGELES SUPERIOR COURT

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Tips from the bench for handling motor-vehicle cases

NEWLY FILED MV ACCIDENT CASES ARE BEING ASSIGNED TO INDEPENDENT CALENDAR COURTS; JUDGES MAY HAVE DIFFERENT PROTOCOLS FOR HANDLING THESE CASES

In response to the budget crisis and courtroom shortage in 2013, the Los Angeles Superior Court created the Personal Injury (PI) Hub system to handle a high volume of PI cases with scant judicial resources. Since then, most personal-injury cases, including motor-vehicle accidents, were assigned to one of the six PI hub courts (Depts. 27-32) at the Spring Street Court for pretrial litigation and case management. Cases that were later designated as complex by the PI Hub judge would be reassigned to independent calendar courts, either downtown or in one of the districts, based on the location of the incident.

When PI cases were filed, a trial date was automatically set, usually about 18 months from the filing date. The PI Hub courts typically do not hold routine case-management conferences. Those cases that do not settle and are ready for trial are assigned by Department 1 to one of the many dedicated trial courts around the county for trial and pre-trial motions, including motions in limine.

In October of last year, based on the court's Eighth Amended Standing Order, for newly filed cases in which a personal-injury incident occurred in a district, those cases are currently filed directly in the district and assigned to an independent calendar court for all purposes.

In my independent calendar court in Santa Monica, approximately 125-150 motor vehicle accident matters have been assigned to my department since October 2022. During my assignment to a trial court in Van Nuys, I had the opportunity to preside over many car-accident trials, ranging from low-impact soft-tissue (MIST) cases to wrongful-death matters. While sitting in an independent-calendar court, both in Van Nuys and Santa Monica, there have been very few motor-vehicle accident cases in my caseload until last fall.

Currently, independent-calendar courts may vary widely in their timing and procedures. Your case may not be

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managed in the same manner or set on the same timeline in each courtroom. Each independent-calendar judge will have discretion in handling the motor-vehicle-accident matters in their department. Some judges may use a timeline similar to what may be used in the PI Hub. Others may set an initial status conference three, four or six months after the filing of the complaint.

For example, when a new car-accident matter is assigned to my department, the court clerk automatically sets a case management conference and order to show cause (OSC) regarding proof of service four months from the filing date.

These are some issues to consider in handling your motor vehicle accident cases outside the PI Hub.

In the beginning…

When you appear for an initial status conference in your motor-vehicle-accident matter, make sure you are familiar with the facts of the case. For example, the judge may generally inquire about how the incident happened (e.g., rear end, T-bone, left turn, multiple-vehicle accident, etc.), whether there is insurance and policy-limits information, the nature of the injuries and treatment (past and future), amount of medical bills (past and future) and lost earnings/earnings capacity. If someone other than the handling attorney is scheduled to appear at the initial status conference, it is important that they know these essential facts of the case.

If service has not been effected on all parties, be prepared to let the court know when those remaining non-served parties will be served, so the court can continue the matter for a sufficient amount of time to allow for service and filing of a responsive pleading.

If a party cannot be located after multiple attempts at service, you may want to inquire about the court's policy for requesting service by publication. Some courts require a noticed motion or ex parte to do so. If an attorney reports at a status conference that a party will need to be served by publication, I typically ask counsel to file a declaration establishing good cause for service by publication and the order for my judicial assistant to process, without requiring a motion or ex parte application.

When a defendant has been served but fails to respond, the court may require you to seek a default against the non-answering party. Often a defendant has simply failed to turn over the complaint to their insurance carrier. However, it may be necessary to obtain a default driver if no responsive pleading is filed. Many times, those who do not answer are uninsured drivers, and you may need to make a claim against your client's uninsured/underinsured motorist coverage.

Mediation/ADR

At a further status conference, be prepared to discuss when you plan to be ready to mediate your case and in what forum. It is good practice to have this discussion with opposing counsel before a status conference, so you are able to report to the bench officer your joint plan for alternative dispute resolution.

For many car-accident cases, a private mediator may be appropriate, particularly for higher-exposure cases. There are many neutrals available, both retired bench officers and practitioners, who are well qualified to mediate car-accident cases. Parties have been reporting that they are often not able to schedule a mediation sooner than several months out, particularly for some of the more in-demand mediators. Make sure to schedule your mediation as soon as practicable, to ensure you have the mediator of your choice at the time of your choice.

Mandatory settlement conferences may be an option, depending on the availability of judges sitting in MSC courts. In the west district, there is currently only one judge sitting in a full-time MSC court, so only a few cases per month can be set for MSC, typically about two per month for each independent calendar court.

The ResolveLawLA program (www.ResolveLawLA.com), a virtual MSC program, is staffed by experienced volunteer lawyers from CAALA, ABOTA, ASDC and the Beverly Hills Bar Association. It provides a free, three-hour mediation presided over by one plaintiff attorney and one defense attorney. The parties can either be ordered to a ResolveLawLA mediation by the court, or the parties can stipulate to attend.

ResolveLawLA may be a great alternative to private mediation in a lower-value car-accident case. If this is an appropriate form of ADR for your case, you may want to suggest that the judge refer your case to that program. Some departments may not refer the parties to ResolveLawLA until the Final Status Conference, but if you think your motor-vehicle-accident case may be ready for mediation earlier, then you may want to request a referral when you and opposing counsel feel the case is ready to mediate. In my experience, judges are more than happy to order a matter to the program if the parties request. Typically, time slots for ResolveLawLA mediations are readily available within a few weeks.

You may want to consider attending some form of ADR, whether private mediation, MSC or ResolveLawLA, before experts are designated or deposed. Since getting experts ready for deposition and deposing the other side's experts can be very costly, mediating the case before expert designation or depositions can make cases easier to settle before both sides incur significant expert costs.

Pre-trial considerations including increase in PI filings

With the large number of newly filed personal-injury cases being assigned to some independent-calendar courts, you may want to ask the judge to set your case for trial as soon as your case is at issue. In my department, I typically suggest that the parties set a trial date as soon as the matter is at issue, with a trial date 10-12 months away. Since my department has seen a huge increase in personal-injury filings in the past six months, if a trial date is not set as soon as practical, your client's trial may end up being delayed

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more than you (and your client) would like.

Consider serving a statutory offer to compromise (Code Civ. Proc., § 998) in car-accident matters. These statutory offers to compromise can serve as a vehicle for shifting certain costs, including expert costs, to the opposing party if the verdict at trial meets or exceeds the amount of the 998 offer. Particularly in a lower-value case, a 998 may give you leverage in attempting to settle your case.

You may also want to consider an expedited jury trial (see form EJT-010-info). These one-day trials limit each side to three hours of testimony and are tried before a jury of eight (six required for a verdict). The parties may agree to testimony via declaration, including expert testimony. This may be a more economical way to try lower-value cases, perhaps such as MIST cases. However, there is no right to appeal.

Thoughts for trial

At trial, you may consider bringing out the negative factors of your case before the other side has the chance to do so. For example, if the amount of property damage is low or the photographs don't seem to show much damage, most jurors seem to appreciate a plaintiff who acknowledges these facts, rather than trying to hide them, only for defense counsel to bring them to the jurors' attention.

Some judges, such as those who formerly sat in the PI Hub courts or trial courts, may be very familiar with handling and trying motor-vehicle-accident cases. But some judges may have less recent experience handling car-accident cases and may not be familiar with the typical pre-trial motions in car-accident cases. Below are some of the typical issues you may need to be prepared to brief or argue:

- Admissibility of any portion of the traffic-collision report.
- Amount of medical bills, particularly for medical treatment rendered on a lien or for patients who are insured but choose medical care outside their insurance plan. (*Howell v Hamilton Meats & Provisions Co.* (2011) 52 Cal.4th 541; *Pebley v. Santa Clara Organics LLC* (2018) 22 Cal.App.5th 1266; CACI 3903A.)
- Admissibility of testimony based on hearsay (*People v. Sanchez* (2016) 63 Cal.4th 665; *Strobel v. Johnson & Johnson* (2021) 70 Cal. App.5th 796). Testimony from treating physicians may overcome hearsay objections regarding damages evidence.
- Admissibility of the severity of the collision in an admitted-liability car-accident case (severity of impact/forces/speed evidence may be admissible regarding the nature and extent of injuries).
- Admissibility of lack of valid drivers license/driving on a suspended license.

Regarding voir dire, be prepared to discuss your proposed questions with the court. Think about which issues you would like the court to address with potential jurors versus what issues you would like to address. If you have a low property-damage claim, would you prefer the court to inquire about jurors' feelings about a plaintiff claiming significant injuries and significant damages, even when the repair bills are low or even if the photographs do not show lots of property damage? Or would it be more advantageous to your client for those opinions to be explored by counsel?

Some jurors may have strong feelings about alternative medical care or chiropractic care. If your client received such care, you may want to ask the court to make inquiry about those opinions. What if your client is not visibly injured? Think about how to acknowledge that fact, while educating the jurors that someone may have significant injuries, pain or limitations that are not readily visible.

Likewise, for a plaintiff who has suffered prior injuries, jurors seem to appreciate plaintiff's counsel who readily acknowledge a plaintiff's medical history, rather than trying to hide certain aspects of it. CACI 3927 and 3928 address prior injuries, so that may be a way to either ask the court to address prior injuries or to do so yourself. Sometimes, plaintiff's lawyers will try to avoid confronting prior injuries and pre-existing medical conditions that were exacerbated by the incident in voir dire. This may be a good chance to educate the prospective jurors about "eggshell" plaintiffs.

There may be other jury instructions that merit highlighting during voir dire. In my experience, most courts allow reasonable examination of the venire with respect to the law the jury will be asked to apply.

A mini opening statement may be appropriate in a car-accident case to get the jurors briefly acquainted with the facts of the case. Per Code of Civil Procedure section 222.5, subdivision (d) the court must allow mini openings if requested by either side.

Develop a theme for your case and return to it as frequently as possible. Introduce your theme in mini opening and/or opening statement. If your client had a specific hobby, whether yoga, hiking or ballroom dance, consider having a friend testify about doing those activities with your client. And return to your theme with as many witnesses as possible. Of course, that will be the centerpiece of your closing argument.

With so many newly filed motor-vehicle-accident cases being assigned to independent calendar courts, it is important to remember that judges may have different protocols for handling these cases. It may be worthwhile to ask the judge if a trial brief on a particular issue might be useful, since they may have different levels of experience in managing and trying car-accident cases.

Judge Elaine Mandel was appointed to the bench in 2009, after handling plaintiff's civil cases for 17 years. She served on the boards of CAALA, LACBA and the Women Lawyers of Los Angeles. She sits in an independent calendar court in Santa Monica.