



Kevin Conlogue

CONLOGUE LAW, LLP



Ashley Conlogue

CONLOGUE LAW, LLP

How to successfully try cases in federal court

TRYING A CASE IN FEDERAL COURT IS NOTHING TO BE AFRAID OF BUT YOU MUST KNOW THE RULES, ESPECIALLY THE JUDGE’S “LOCAL, LOCAL RULES”

If you practice primarily in California state courts, you may feel apprehensive if you find yourself preparing for an upcoming trial in federal court. However, you need not be afraid. Those of us who regularly try cases in federal court often prefer it to a state court venue. We think you might, too, as long as you are prepared. If you follow the roadmap below, your federal trial will go just fine, and you may decide, like us, that you appreciate and enjoy trials in federal court.

Study up and come prepared

Failing to prepare is preparing to fail. Federal judges do not suffer fools, so make sure you are well versed in the rules that apply, and that you are capable of providing citations to support any argument you intend to make. Both the Federal Rules of Civil Procedure and the Federal Rules of Evidence differ from California’s rules in meaningful ways, and you must know those differences.

We use the Federal Rule of Civil Procedure, Rules and Commentary by Steven S. Gensler as a desktop reference for discovery motions, procedural motions during trial, post-trial motions, and any procedural question that arises during the course of trial or your pre-trial work. It is organized by federal rule and is a handy guide for any federal court practitioner. Within each federal rule section, the commentary is on point and provides guidance to specific issues along with citations. Other treatises are available, but this one is easy to use.

The right stuff

At any hearing, or in any paper, do not miscite any authority. Each court has about four extremely bright law clerks who go through everything with a fine tooth comb. Any misrepresentation, even if negligently done, will not go well. Similarly, do not overreach your position as you will not be rewarded. And, it is particularly important in federal court to spend some extra minutes to make sure your writing is free from typographical or grammatical errors, and is well formatted according to the local rules. For example, the Central District local rules have specific requirements for typeface, spacing, page limits, and font size, which differ from the conventional state court practice, so make sure your briefs comply.

While most state courts no longer appreciate “courtesy copies” of your briefs, this convention is still largely required in



federal court. Know which pre-trial documents must be lodged directly with your judge (in addition to being electronically filed), and in what format they must be. Some judges still require formal “bluebacking” of your documents. Others require binders for multiple filings such as motions in limine or jury instructions.

Refer to the local rules and the local, local rules

The District Court of California has its own local rules, which expand upon and even modify the federal rules. What applies in the Southern District may not apply in the Central District. These local rules are easily accessible via a Google search and can be downloaded as a searchable PDF. You should have the civil local rules and keep them nearby when you are prepping for trial and in trial.

Additionally, standing orders, or “local, local rules” provide further instruction and guidance as to the procedures and rules that apply in each judge’s courtroom. Standing orders are easily accessible on every district judge’s webpage of the United States District Court website. Each judge sets their own standard regarding pre-trial work and trial in their courtroom. Things such as the number of motions in limine, page limitations for briefs, how to conduct voir dire, and the format of your exhibit and witness lists may be found here and may differ in meaningful ways from the local rules.

Not following your judge’s “local, local rules” could result in sanctions, or even dismissal of your case, so these “local, local rules” should be referred to early and often and adhered to strictly. Be prepared to set aside at least one hour to review your judge’s local, local rules, noting key procedures and requirements, and calendaring courtroom-specific deadlines.

As a practice pointer, if you have a question as to the proper procedure in your federal case, start with the “local, local rules” and then look to the local rules, and then to the corresponding federal rule, in that order.

Avoid ex partes

Ex partes are always disfavored, especially so in federal court, and are for extraordinary relief only. (See *Mission Power Engineering Co. v. Continental Casualty Co.* (C.D. Cal. 1995) 883 F.Supp. 488.) Ex partes are either rarely needed or could be avoided with proper

preparation or a meaningful “meet and confer” with opposing counsel. Avoid them at all costs.

If you must file an ex parte, make sure that you have strictly complied with the court’s local, local rules and that you have sufficiently “met and conferred” as required. Remember that federal courts often have an in-person meet and confer requirement, or at least a telephonic requirement, so a letter is not sufficient in most cases. Do not expect to have oral argument on any ex parte application, so make sure your papers are complete and well-cited.

What are you, yellow?

The original copies of trial exhibits in federal court are color coordinated by party. Plaintiffs use yellow exhibit tabs, and defendants use blue exhibit tabs. The forms for the exhibit tabs can be downloaded from the Central District of California’s website, specifically where forms can be found. You will need form G-14A. Refer to your judge’s “local, local rules” on how and where to affix the yellow exhibit tabs to each exhibit. You will need to do this before the first day of trial.

Move fast

We find that the average length of a federal court trial is two to three days – even in a complex case with serious damages. Although it seems difficult, this timeline works just fine as long as you know your case well and don’t belabor your argument. The court, and your jurors, will appreciate your streamlined approach. We often reference an analogy provided by a skilled federal court jurist: Make your federal trial like a Hollywood movie. Take thousands of hours of “footage” – your depositions, medical records, damages testimony – and reduce it down to a 1.5-hour story. The jury will understand your themes, key factual points, and your argument within that time frame while still staying engaged and focused.

Having a short trial is beneficial in other respects too. Red herrings and collateral issues are avoided, and it keeps

the issues very straightforward for the jury to decide. Also, having such a short trial over a few days allows you as a practitioner to get back to the office to continue to work up the other cases that you have.

Dial down the rhetoric

Your credibility and professionalism are always important, but critically so in federal court. In your briefs and in your arguments, you should avoid hyperbole, inflammatory words, or excessive adjectives. You should never personally attack opposing counsel or demonize the defendant. The argument that will win the day in federal court is clear-headed, well-reasoned, and impeccably cited and referenced, either to the applicable law or rule, or the evidence.

With respect to your conduct, ensure that you are always neatly and appropriately dressed, that you are on time, and, most importantly, that you are polite and accommodating to witnesses, court staff, and opposing counsel alike. The federal bar is not large, and your reputation will proceed you.

Observe courtroom etiquette. When it comes to your arguments or questioning of a witness, remember to remain behind the podium at all times, even if opposing counsel does not. Never cross the “well.” Stand when you make objections. Always request permission to approach the bench or the witness. Never interrupt the court. Civility goes a long way towards establishing the court’s, and the jury’s impression of you, especially in a more formal federal courtroom.

Voir dire

Don’t expect any voir dire. Some federal judges will accept written *voir dire* questions from counsel in advance, but do not expect even this accommodation. Your jury will likely be empaneled within a few hours of the venire being called, usually before lunch on your first day of trial, so make sure you are ready to go with your opening statement and first several witnesses on day one.

If a federal judge does allow you to conduct voir dire, there will be a short

time limit – i.e., 15 to 20 minutes. Do not re-ask any questions that the court already asked. Do not call any jurors by their first names. If the court tells you to move on from one of your questions, the judge is likely telling you that you are done with voir dire. You must know how to read the room, and more importantly, how to read your judge.

The jury pool

In the Central District of California, the jury pool is diverse. The jury pool is pulled from Los Angeles County, Orange County, Riverside County, San Bernardino County, Ventura County, Santa Barbara County, and San Luis Obispo County. It is possible that you can be in downtown Los Angeles, but have a juror commuting three hours each way from San Luis Obispo County.

Also, a federal jury must contain at least six members, and most courts within the Central District will seat about seven to eight. Do not ask about alternate jurors as they do not exist in federal court. Doing so telegraphs to the court that you are not prepared and that you do not know what you are doing in federal court.

Also remember that your verdict must be unanimous in federal court, so you generally want closer to six than 12 jurors. Although a holdout juror can cause a mistrial, unanimous verdicts are routinely rendered. As mentioned above, because the trial is only two to three days,

the jury mostly does not get sidetracked during deliberations with non-issues.

Logistics

Remember that federal courts are staffed by U.S. Marshals. In general, everyone appearing must present a government-issued I.D. If you have clients or witnesses for whom this may be a problem, speak to the court about it in advance and determine the proper procedures for allowing them access to the courtroom. Also, entering and re-entering the courthouse can take up to 30 minutes due to security concerns, so, be wary if you feel the need to leave the courthouse during a break and make sure you are accounting for this additional time every time you arrive.

During trial, your lunch is not going to be an hour and a half. It can be short, 30 minutes or less, and some federal judges have no lunch, where you simply have two 20-minute breaks, but you are done by two o'clock in the afternoon. Regardless, you should expect that you will be eating at the courtroom cafeteria as you will not have time to go anywhere else.

Before trial, make sure you have asked the court how you should handle any technology you wish to use, and make an appointment with the courtroom deputy to test the equipment that is in place within the courtroom to ensure it works and you know how to use it. The technology and equipment in federal court is quite nice

and a great aid in presenting evidence. Make sure you know how to use it.

Another benefit of trial in federal court is that you will not need to organize a court reporter for your trial, as federal courts have court reporters present in every courtroom. However, you should coordinate with the court's reporter and opposing counsel with respect to whether you want real-time, dailies, or any other specific accommodation.

Conclusion

Trying a case in federal court is nothing to be afraid of. Just follow the Federal Rules of Civil Procedure, the Central District of California Local Rules, and your federal judge's "local, local rules" (often referred to as standing orders). Be your professional and authentic self, presenting an honest case on behalf of your deserving clients. Following these guidelines will go a long way in ensuring a positive trial experience for yourself, your client, and your firm. We hope to see you in court.

Kevin S. Conlogue, a founding partner at Conlogue Law, LLP, is the firm's lead trial lawyer, who represents plaintiffs in personal injury, police misconduct, and maritime injury cases.

Ashley M. Conlogue is also a founding partner at Conlogue Law, LLP. Her practice focuses on catastrophic personal-injury and wrongful-death cases in federal and state court.