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Benchbooks and Manuals of Procedure: Practical Guides for Bench and Bar

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I. INTRODUCTION

As every practitioner knows, all of the answers are not to be found in the statutes and case law. While these are the primary source for the substantive principles of law, they contain precious little information relating to the mechanics and techniques necessary to guide one's client successfully through the murky mire of litigation.

This largely unrecorded body of law and necessary knowledge of proper procedural tactics generally is obtainable only through the often harsh tribulations of actual experience, observation and conversation with those possessing greater experience. All this is subject to the frailties of human memory, the inaccuracies and uncertainties of human communication, and, not by any means the least, the predilections of individual trial judges.

The problem is manifested by the clients who have received less than their just due from the court or jury; by the lawyers who have been embarrassed in the presence of their client and opposing counsel; by the settlements that reflect the lawyer's desire to avoid discomfort and embarrassment; and by the wasted time and effort of lawyers, judges and members of the public. All these failings are partially the product of the fundamental problem of ignorance concerning the mastery of courtroom techniques and mechanical processes. It seems most certain that, if documented, the magnitude of the impact of this professional deficiency on the administration of justice would be disconcerting to all.

The failure to master the techniques of courtroom procedure is an integral part of the larger problem of satisfying the growing need for competent trial lawyers and trial judges. Chief Justice Burger has spoken emphatically1 on the need to improve the cali-

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ber of the trial bar. Surely all will agree that, generally speaking, both trial lawyers and trial judges are capable of improvement of their overall performance.

The Los Angeles Superior Court has learned from experience that the use of benchbooks and manuals of procedure materially enhances the quality of work on the part of both the bench and bar by providing uniform, practical, and fair procedures and policies for the disposition of sundry matters coming before the court.

II. DEFINITION, FORMULATION AND AVAILABILITY

Benchbooks and manuals of procedure have some common characteristics. Perhaps the difference in appellation is partially historical accident. Benchbooks were originally intended to be used exclusively by the bench, while manuals of procedure have always been written for the joint benefit of the bench and bar.

A "benchbook" is a compilation, by members of the bench, containing the following:

1. "Magic Words"—judicially approved language to be followed incident to certain procedures (for example, entering a plea of guilty or waiving a jury).
2. Scope Notes—a description of what is covered in that particular part of the benchbook.
3. References—including references to statutes, texts, cases, rules, etc., on particular points.
4. Notes and Comments—succinct statements of the law, with appropriate citations, relating to problems commonly encountered, including matters of evidence.

In addition to a summary review of the substantive law, organized in the context of specific proceedings and their incidental problems (which distinguishes it from other legal compendiums), a benchbook contains explicit dialogue adequate for a legally sufficient hearing. Implicit in this is a recognition of the fact that judges are neither omniscient nor possessed with total recall, particularly as to hearings occurring infrequently.


2. While the benchbooks are designed primarily for the bench, it was soon apparent in Los Angeles that the Criminal Benchbook would be invaluable to the bar as well. Accordingly, the West Publishing Company has made it available to the public.

3. Manuals of procedure are published by the two legal newspapers in central Los Angeles, the Los Angeles Daily Journal and the Metropolitan News, and can be purchased from them in loose-leaf form by attorneys and the public generally.
The benchbook format is flexible, depending on the subject matter, and may include forms, procedural information, jury voir dire script, and related textual material, e.g., an explanation of appraisal methods is included in the Eminent Domain Benchbook.  

A “manual of procedure” is a distillation of substantive law, court rules and policies. Its objective is to establish guidelines for counsel’s presentations in a specialized department of the court (e.g., discovery, law and motion, eminent domain, and probate), so the department’s work can proceed efficiently and fairly with respect to all litigants. Lawyers can thereby navigate their clients’ problems through the various judicial canals in a precise and knowledgeable manner.

The objective of a manual of procedure is to provide definitive answers to problems arising incident to specific court proceedings. These range from where and how to file papers to such matters as the criteria for resolution of motions for summary judgment. In any area of the law, in addition to formal court rules, there will be a certain quantum of substantive law affecting judicial procedure. The sum of both, however, leaves a very considerable area of “uncharted water.” The policy portion of a manual of procedure is simply the formulation of guidelines by knowledgeable members of the court, at times with the assistance of the bar, filling in these gaps until the legislature or the appellate court speaks. In many instances the available substantive law is conspicuous by its absence, primarily because the subject matter is of a kind traditionally reserved for judicial discretion which does not readily lend itself to statutory enactment and case law. Manifestly, this “policy” is not binding on a trial judge.

The perimeters of benchbooks and manuals of procedure are not clearly defined and, to some extent, they may overlap. Each has its place, however, and in some areas a court might have both. In certain specialized areas, such as law and motion, there would be no place for a benchbook. In others, probate for example, it would be of dubious value.

The primary responsibility for drafting either benchbooks or manuals of procedure is usually entrusted to one or two judges. Drafts are submitted to colleagues and, when appropriate, to practitioners. Benchbooks do not involve policy and need not be approved by the entire court or its governing body. Manuals of procedure, on the other hand, do reflect court policy and should be

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4. See note 14 and accompanying text, infra.
5. The Los Angeles Superior Court has both a benchbook and a bar manual for eminent domain.
officially approved in order to ensure consistency of application. In either case, it is simply an evolutionary process reflecting the input of experience and knowledge by recognized experts, hammered out in the crucible of innumerable discussions and, seemingly, interminable editing.

A loose-leaf format is preferable for both benchbooks and manuals of procedure because it is essential that they be adaptable to modification. Experience demonstrates that some rules and policies do not accomplish what was intended by their draftsmen. Furthermore, substantive changes of law, either by statute or appellate decisions, will mandate some revision and/or deletion.

III. BENCHBOOK AND MANUAL OF PROCEDURE SPECIMENS

A. Benchbook Specimens

The Los Angeles Superior Court's original benchbook related to criminal law. First published in 1971, it has been the subject of several revisions. Additionally, an eminent domain benchbook is currently being prepared. For purposes of this article, representative sections of both benchbooks will be used for illustration. The format differs with the subject matter, e.g., the so-called "magic words" are not a part of the eminent domain benchbook.

The Criminal Benchbook table of contents reflects the comprehensive nature of this work. It covers every conceivable proceeding and motion available to either party in any California Superior Court, and is divided into five major categories: (1) Before Trial, (2) Trial to Verdict, (3) Verdict to Judgment, (4) After Judgment and (5) Miscellaneous.

Each chapter of the Criminal Benchbook is divided into relevant sections and subsections as exemplified by Chapter 2 which considers the time and place of trial. Each chapter section has its Scope Note, References and Contents sections. Typical is Section I (Present Insanity (Penal Code Section 1368)) of Chapter 3, which covers Motions to Stop Proceedings.

A "Scope Note" describes, in succinct fashion, the subject matter of the section and pertinent accompanying commentary. "References" are simply that—a brief bibliography of other helpful written material relating to the section subject matter. "Contents," as the word bespeaks, discloses the specific section sub-

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6. See Exhibit A, infra at 529.
7. See Exhibit B, infra at 530.
8. See Exhibit C, infra at 530.
topics and their pagination, i.e., notes and comments, written and spoken forms.

Each chapter section of the Criminal Benchbook has a section concerning "Notes and Comments." A representative example is the Notes and Comments section accompanying Section N (Amending the Pleadings) of Chapter 4 (Preparation for Trial). The objective is to provide answers to the procedural and substantive questions that arise incident to amending an indictment or information. Each definitive statement has an appropriate reference to supporting authority.

Finally, the Criminal Benchbook contains a most practical and helpful tool—"magic words"—which give the appropriate script for a particular proceeding. Many of these scripts are quite lengthy and complex. They are designed to be pervasive, covering all of the technical aspects of a proceeding, thus reducing the prospect of appeal and the possibility of reversal. To illustrate, a relatively brief and simple script for the waiver of a jury by a defendant should suffice.

The style of a benchbook is adaptable to the subject matter. For instance, spoken forms ("magic words") are not a part of the Eminent Domain Benchbook. Pretrial conferences, however, play a predominant role in condemnation cases and, therefore, the procedure for conducting them is set forth in its entirety.

Eminent domain cases use unique forms, and a copy of each is a part of the benchbook. A typical example is the Final Pretrial Conference order. There are also a number of legal concepts peculiar to condemnation. Any benchbook that is to be truly useful must explain these concepts in clear, concise language. In addition to certain legal concepts, eminent domain cases involve economic theories of valuation. Because an understanding of these is indispensable to the handling of this type of case, they are an integral part of the benchbook.

9. See Exhibit D, infra at 531.
10. See Exhibit E, infra at 532.
11. See Appendix A for the procedural format for a pretrial conference.
12. See Appendix B for the "Final Pre-Trial Conference Order" form.
13. The benchbook treatment of the "larger parcel" concept is characteristic. The discussion establishes the problem and the context in which it usually occurs. Concise statements (with supporting case citations) set forth previously considered aspects of the problem along with applicable "rules."
14. One such valuation technique is the "capitalization of income approach." The benchbook discussion of this technique includes definitions of the concept generally and of its component parts; references to more detailed sources; a concise statement of the essential elements.
B. Manual of Procedure Specimens

In Los Angeles County, there are manuals of procedure for the respective specialized departments designated Probate, Writs and Receivers (all petitions for writs of mandamus, receiverships, and preliminary injunctions are calendared for this department), Adoptions, Eminent Domain, Law and Motion, Discovery and Class Action. These manuals supply uniformity as well as directions concerning a myriad of procedural matters. They eliminate uncertainty on the part of counsel and save countless hours for individual judges who need not concern themselves with matters resolved by a manual.

Each manual has a table of contents. A representative example describes sections from the Discovery Manual. It is evident from the sub-headings under the general topic “Interrogatories” that the manual attempts to resolve the common problems that arise and is designed to be utilitarian for the practitioner.

An understanding of exactly what these manuals accomplish is best demonstrated by representative selections from various manuals.

Section 103 of the Probate Manual pertains to “Granting of Letters Pursuant to Various Forms of Petitions.” Some of the information contained in this section is scattered through the statutes and cases. Some of it, however, is original. As every experienced lawyer knows, in spite of the multitude of statutes and cases, a number of specific questions will always remain unanswered. The courts of original jurisdiction have no alternative but to fashion some solution because the business of the world must go forward. The manual provides these answers and, additionally, organizes the entire subject matter in a convenient, comprehensible manner.

While most manuals relate to proceedings other than trials, the Eminent Domain Manual concerns itself with both trial and non-trial matters. The specimen includes guidelines governing the presentation of evidence. Although these are not binding rules, they have a persuasive effect. Through the use of these guidelines, the trial of condemnation cases has been substantially altered and expedited. In particular, the limitation on the number of comparable sales that may be used has helped to bring order out of what tended to be chaos, i.e., almost no limit on the comparables of the approach; a statement of some of the problems likely to occur; and a list of typical questions which may arise if this approach is used.

15. See Exhibit F, infra at 532.
16. See Exhibit G, infra at 533.
17. See Exhibit H, infra at 534.
which, when the real estate market was active, tended to prolong trials unduly. Experience has proved the worth of these limitations to the bar as well as the bench.

There was much uncertainty among lawyers concerning the use of demurrers vis-a-vis motions to strike. The result of this confusion was annoyance and loss of valuable time to all concerned. The court's policy as enunciated in the Law and Motion Manual,\textsuperscript{18} resolved this. Answers were not available from any other source.

With the advent of generous discovery, demurrers for uncertainty tended to become obsolete. The legislature, however, has not seen fit to eliminate them. The Los Angeles Superior Court, on its own initiative, in order to save precious judicial time, has deliberately attempted to discourage the filing of this type of demurrer. Section 21C of the Law and Motion Manual\textsuperscript{19} considers this, setting forth the reasons and pointing out a better alternative for accomplishing the same result.

IV. CIVIL BENCHBOOK

The California Conference of Judges is currently undertaking the preparation of a civil benchbook. It is presently in an embryonic stage. Among other matters, it will provide guidelines for in-chambers settlement conferences, judge participation in trial, conduct of counsel, handling of exhibits, presentation of evidence, use of depositions, jury instructions and the imposition of sanctions.

Within these broad subjects some of the specific points to be covered are:

1. The extent to which, if at all, the court should exclude evidence on its own motion;
2. Examination of witnesses by the court;
3. Bifurcation of issues;
4. Role of the court in obtaining stipulations;
5. Proper method of offering stipulations during trial;
6. Conduct of counsel with respect to jurors;
7. Guidelines for argument;
8. Uniform procedure for marking exhibits;
9. Reading of documents to the jury;
10. Guidelines for using maps and diagrams;
11. Use of blackboards;
12. Hypothetical questions; and
13. Standardized procedures for the use of depositions for impeachment.

\textsuperscript{18} See Exhibit I, infra at 535.
\textsuperscript{19} Id. § 21C.
The purpose of this endeavor is to provide a reasonable and uniform policy for many of the areas within which the trial judge must exercise his discretion. Some of these matters are the focal point for heated disagreements among counsel and between counsel and the court, wasting considerable time and diverting attention from the actual conduct of the trial.

V. CONCLUSION

The objective of benchbooks and manuals of procedure is to promulgate criteria to which all can refer and upon which all can rely, thereby eliminating a substantial amount of uncertainty, discord and embarrassment. It is reasonable to expect that the quality of justice will improve as a result of defining and recording the mechanics and techniques that presently constitute a body of information not available in the primary sources of substantive and procedural law.

The Los Angeles Superior Court has lately witnessed the benefits to be gained from benchbooks and manuals of procedure. For example, the average trial of eminent domain cases has been shortened substantially and everyone involved seems to be pleased with the new policies that have made it possible. In the area of class actions, novel to the practice of most lawyers, the Los Angeles manual of procedure has brought order out of chaos.

Good benchbooks and manuals of procedure require a substantial input of time and thought. The work done in Los Angeles County is available for all to use as they see fit. Granted, jurisdictional variations will mandate some changes in format, but, for the most part, the Los Angeles benchbooks and manuals should substantially lighten the burden for others. The Los Angeles experience has proved the inestimable value of benchbooks and manuals of procedure.

We have a responsibility to enhance the system of justice which we have inherited and which we hold in trust. This is one feasible way to partially satisfy that obligation.
PRACTICAL GUIDES

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Criminal Benchbook, Los Angeles Superior Court at 1c [hereinafter cited as Criminal Benchbook] (The Criminal Benchbook is published by West Publishing Co.).
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Criminal Benchbook at 107.
† By way of explanation, Department 100 is the Master Calendar Department for the criminal courts. The Criminal Courts Coordinator is a lay administrator who routes cases among the various criminal departments, and a Court Commissioner is a subordinate judicial officer.

Exhibit C
Present (P.C. 1368) Insanity

SCOPE NOTE
This section discusses the procedures necessary when it appears at any time during criminal proceedings that a defendant is in such a mental state that he cannot adequately defend his interest nor be brought to trial. Because of the trifurcated meaning of "insanity" with which we must deal at various stages of criminal proceedings this section of the BENCHBOOK has been selected as the location for an analysis of the distinctions that exist. Since appointment of psychiatrists is necessary, a list of the approved panel of psychiatrists and a discussion of their appointment is included. See DESKBOOK concerning compensation for psychiatrists and a more detailed discussion of "insanity."

REFERENCES
In BENCHBOOK see:
- Insanity Trial on N.G.I. Plea, Ch. 8.K
- Post Acquittal (P.C. 1026, 1026a) Insanity, Ch. 11.
- Insanity at Sentence, Ch. 9.C
- Mentally Disordered Sex Offender, Ch. 11.
- Expert Witness, Ch. 4.P

P.C. 1367-1375
Witkin, California Criminal Procedure, Secs. 508-515, 1969 Supp. 514A
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Criminal Benchbook at 127.

**Exhibit D**

**Notes and Comments**


The amendment may be made without consent of the court before the defendant pleads or a demurrer to the original pleading is sustained. P.C. 1009, Peo. v. Crosby, supra. Thereafter, an amendment is discretionary with the court, and it may be permitted at any stage of the proceedings, so long as the rights of the defendant are not thereby prejudiced. P.C. 1009, (indictment) Peo. v. De Georgio, 185 C.A.2d 413 (1960), (information) Peo. v. Hernandez, 197 C.A.2d 25 (1961). The court’s discretion is almost invariably upheld. Id. It’s discretion is limited, however, in that although an information can be amended to “conform to proof” as presented at trial, Peo. v. Valles, 192 C.A.2d 362 (1961), it cannot be amended to charge an offense not shown by the evidence taken at the preliminary examination. P.C. 1009. An indictment may be amended without resubmission to the grand jury as long as the offense charged is not changed. Peo. v. O’Moore, 83 C.A.2d 586 (1948). If before trial the defect cannot be cured by an amendment, the case may be resubmitted, even to the same grand jury; this initiates a new proceeding so as to recommence the 60-day statutory time limit. Ex parte Rosenberg, 23 C.A.2d 265 (1937).

An error permitting an improper amendment will be waived if the defendant does not object or move to set aside the information. Peo. v. Walker, supra, Peo. v. Workman, 121 C.A.2d 533 (1953).

The defendant should be arraigned, and plead to the amended information or indictment forthwith, P.C. 1009; however, this requirement, as well as a second waiver of a jury trial, is deemed waived if the defendant does not object. Peo. v. McQuiston, 264 C.A.2d 410 (1968), Peo. v. O’Hara, 184 C.A.2d 798 (1960), Peo. v. Walker, supra. This is particularly true where the change is a minor one, Peo. v. McQuiston, supra, or where the case has gone to trial on an original plea of not guilty. In re Mitchell, 56 C.2d 667 (1961).

Where the amendment makes no substantial change in the offense charged so that no further preparation is necessary, a request for a continuance may be denied. Peo. v. O’Hara, supra, Peo. v. Sutter, 43 C.A.2d 444 (1941). These include clerical errors and other minor changes. Yet if additional preparation would be necessary, it may be a reversible error to deny a continuance, Peo. v. Murphy, 59 C.2d 818 (1963). If a continuance is granted, it should not be for less than one day. P.C. 990, Peo. v. Hembree, 143 C.A.2d 783 (1956).

Amendments charging prior felony convictions either in this State or elsewhere may be added at any time by order of the court, without the
necessity of resubmitting an indictment to the grand jury. P.C. 969a. The defendant shall be promptly rearraigned and plead to such information or indictment as amended, P.C. 969a, and he is not entitled to a continuance. Peo. v. Barwick, 7 C.2d 696 (1936).

Criminal Benchbook at 168.

Exhibit E

Spoken Form: Waiver of Jury Trial by the Court

JUDGE: "The court will call the case of People v. ______. "Is (defendant's name) your true name?"

DEFENDANT: (Responds)

JUDGE: "Let the record show that the defendant and his counsel, Mr. (name), are present."

"Are both sides ready for trial?"

DEFENSE COUNSEL: "Your Honor, the defendant wishes to waive his right of a trial by jury and requests a court trial."

JUDGE: "Mr. (defendant), your attorney has told the court that you want to give up your right of a trial by jury. It is my duty to advise you that the Constitution gives you the right of a trial by jury of 12 people. That is 12 people selected from the community who will decide the question of your guilt or innocence as to the charges filed against you in the information (indictment). The right to a jury trial is a personal right of each defendant. You must personally decide if you want a jury trial or if you want to give it up and if you want a judge sitting without a jury to decide the question of your innocence or guilt. Your attorney cannot make this decision for you."

"Do you understand what a jury trial is?"

DEFENDANT: (Responds)

JUDGE: "Do you now waive and give up your right to a jury trial and agree that this matter can be tried by a judge sitting without a jury?"

DEFENDANT: (Responds)

JUDGE: "Counsel, do you each join in the waiver of a trial by jury in this case?"

DEFENSE COUNSEL: "I join in the waiver."

DISTRICT ATTORNEY: "The People join in the waiver."

JUDGE: "The court will accept the jury waiver."

Criminal Benchbook at 263.

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2. Petition filed for probate of will and for letters testamentary and the will having been denied probate—a petition for letters of administration must be filed.

3. Petition filed for probate of will and for letters of administration with will annexed and the will having been denied probate—letters of administration may be granted on same petition.

4. Petition filed for probate of will and for letters of administration with will annexed and the Court finds petitioner was named as executor—letters testamentary may be granted on same petition.

5. Petition filed for probate of will and for letters testamentary and the will is admitted but letters testamentary are not granted—letters of administration c.t.a. cannot be issued until a petition for the same is filed and proper notice given.

104. Requirements of Publication of Notice of Probate of Will
The published notice of a hearing of a “petition for probate of will” is sufficient to include all instruments which are offered for probate and specifically referred to in the petition for which the notice of hearing is given. Any other wills or codicils not specifically mentioned in said petition must be presented to the court by way of an amended petition or a second petition, and a new notice thereon must be published. Attaching a copy of any instrument without specific reference to it in the petition is insufficient. (Estate of Olson, 200 Cal. App. 2d 234 (1962)).

105. Notice Re Petition for Letters Testamentary When Will Has Been Previously Admitted
On a petition for letters testamentary, based on a will already admitted to probate, ten days' notice by mail must be given by the petitioner or his attorney to heirs, legatees and devisees, but if the time to contest the will has expired notice need only be given to the legatees and devisees.


Exhibit H

Eminent Domain Manual

Said limitations and requirements include, but are not limited to the following:

1. Limit the time used by counsel in presenting the appraiser's expert qualifications to the jury to not more than 20 minutes, unless upon a showing of good cause for additional time.

2. Limit the number of comparable market sales used by the appraiser in support of his opinion of value to not more than 6, unless upon a showing of good cause for additional data.

3. Limit a jury view of the subject property and/or comparable sales where there have been substantial physical changes in same or in the neighborhood since the date of valuation which changes may prejudice either party.

4. Require that any objections to the admissibility of exhibits and/or comparable sales or other supporting data be heard and ruled upon by the trial court prior to the impaneling of the jury, in order to avoid interruptions and delays during the trial.

5. Require that all comparable sales data used in the market data/sales approach to valuation must be printed legibly on white paper so that same can be read by the jury when affixed in the customary manner for courtroom exhibits.

That said exhibit should include data relating to the following:

(a) location
(b) area and shape of the sale property
(c) topography
(d) zoning
The above limitations and requirements are recited by the judge in Department 43 and are incorporated in the first pretrial conference order to completely prepare the parties for the order or ruling of the trial court where deemed appropriate.

5. The dates set for the final pretrial conference or for the trial may be changed by the court in said department where originally scheduled on written motion, on notice to all interested parties, on an affirmative showing of good cause and in accordance with Superior Court Policies numbered 1-10 effective October 12, 1971, supra. The court expects counsel to give notice of any such motion promptly on discovering good cause therefor. Reserved dates for motions may be obtained from the clerk in said department.

Eminent Domain Manual of Procedure, Los Angeles Superior Court, at 8.

Exhibit I

Demurrers and Motions to Strike

21. Presentation and Disposition.

A. Policy when both filed. Whenever a party files a demurrer, he may also assert a motion to strike. (CCP Secs. 435 and 453.) Where the basis for the objection is that certain allegations are scandalous, irrelevant, or redundant, the matter is properly asserted by a motion to strike the whole or any part of the complaint, cross-complaint or answer. If the motion to strike is filed without a demurrer, the time in which to demur is not extended. Whenever there are grounds for both a demurrer and a motion to strike, both should be served and filed at the same time and calendared for the same date. Where a general demurrer is sustained, the court may place motions to strike off calendar.

Conversely, where such a motion to strike is granted, the demurrer may be placed off calendar.

B. Specials off calendar. When a general demurrer is sustained, the court may place the special demurrers off calendar.

C. Demurrers for uncertainty. Demurrers founded on uncertainty (CCP Sec. 430.10(g)) are disfavored. Where such are asserted, they must distinctly specify the grounds upon which they are made and indicate by reference to page and line the particular parts of the pleading that are uncertain. Such demurrers will be strictly construed. All that is required of a plaintiff or cross-complainant is to set forth the essential facts of his case with reasonable precision and particularity to acquaint his adversary with the nature, source and extent of the cause(s) of action. Specifically, demurrers for uncertainty are disfavored where directed to inconsequential matters or where the facts alleged are presumptively within the knowledge of the demurring party or are readily ascertainable by invoking discovery procedures.

D. Successive demurrer improper. If a demurrer is sustained in part and overruled in part and an amendment is filed to cure those defects in the demurrers that were sustained, it is improper to reassert a demurrer to those portions of the amended pleading where the prior demurrer on the same ground and addressed to the same matter was overruled.

Law and Motion Manual of Procedure, Los Angeles Superior Court, at 8.
Appendix A

First Pretrial Conference

Absent any motions or demurrers, the First Pretrial Conference is the first court appearance for plaintiff and defendant in the action. Prior to the conference plaintiff has usually submitted a joint pretrial statement to defendant for approval, correction, amendment and execution. Prior to entering chambers for the conference, the parties have agreed upon dates for final pretrial conference, mandatory settlement conference and trial. In chambers the following procedure is observed:

1. The court receives the executed joint pretrial statement for filing. If necessary additions cannot be written into the statement, the court includes any other agreed upon facts in its order. Requirements for the joint pretrial statement are contained in the Eminent Domain Policy Memorandum of the Superior Court Rules.

2. The court reviews the status of all parties and determines if non-answering or non-responding parties are to be dismissed, disclaimed or defaulted prior to the final pretrial conference.

3. The court reviews the dates for the final pretrial conference, the mandatory settlement conference and trial as selected by the parties and requests a waiver of notice. The final pretrial conference is set approximately one month before the trial. The mandatory settlement conference is set three weeks before trial, i.e., one week after the final pretrial conference, unless the parties request the same date, e.g., prior negotiations have indicated that they will be able to negotiate without a review of the opponent's appraisal reports. Otherwise, this one-week hiatus between the final pretrial and mandatory settlement conference allows time for the parties to evaluate and review the exchanged appraisal reports and to negotiate at the mandatory settlement conference with additional knowledge.

4. The court determines if there are any legal issues to be resolved by the court without a jury. If so, the court delineates the legal issues and determines if their complexity and the time necessary to present same to the court would require a bifurcated trial prior to the jury trial re compensation issues. Department 43 encourages bifurcation in order that the jury trial re compensation issues will not be interrupted or delayed by the judge's resolution of legal or factual issues not to be submitted to the jury.

If counsel represent that the legal issues can be resolved by the trial judge in a hearing of one-half day or less and that there will not be extensive points and authorities requiring the judge to take the case under submission, Department 43 has been setting the legal issues trial on the same date as the trial of compensation issues. The trial judge will resolve the legal issues before empaneling a jury.

If counsel represent that the trial of legal issues will require one or more days and/or involves lengthy points and authorities, a separate bifurcated trial of legal issues is set.

If the matter is to be bifurcated, court policy is to set the trial of legal issues in Department 43 unless counsel specify Department 1. However, some counsel prefer to have legal issues set in Department 1 and may further request that the judge hearing the legal issues also hear the subsequent valuation jury trial.

5. The court determines factual issues.
6. The court obtains from counsel a time estimate for the trial.

7. The court determines (if not in dispute as an issue):
   a. The effective date of any order of immediate possession. This aids in the latter determination of interest to be paid to defendant.
   b. The date of valuation which the appraisers will use to value the real property interests.

8. The court determines if counsel will waive a jury trial. Some attorneys prefer to wait until the exchange of appraisal reports and the completion of the mandatory settlement conference before making this decision.

Department 43, thereafter, indicates to counsel that inquiry will be renewed at the final pretrial conference as to the following:
   a. An unconditional waiver of jury trial.
   b. A waiver of jury conditioned on the case being assigned to a judge whose name appears on a list prepared by counsel (see Exhibit 1, p.6).
   c. The use of an eight-member jury with a verdict to be rendered by six out of eight or five out of seven or four out of six in the event jurors are excused; waiver of alternates and the reduction of peremptory challenges from six to four. Department 43 has a form of written stipulation for this eight-member jury. (See Exhibit 2, p.8).
   d. Twelve-member juries without the selection of an alternate with a verdict to be rendered by nine out of eleven or twelve, or eight out of ten, in the event jurors are excused (see Exhibit 3, p.9).

9. The court advises counsel that the trial court judge, within his discretion pursuant to § 352 of the Evidence Code, and his inherent authority to control the trial may:
   a. Limit the time for presenting the appraiser's qualifications to not more than twenty minutes, unless there is a showing of good cause for additional time.
   b. Limit the number of comparable sales used by the appraiser in support of his opinion of value to not more than six, unless upon a showing of good cause for the presentation of additional data.
   c. Limit or eliminate a jury view of the subject property and/or comparable sales where there has been such substantial physical changes in same or in the neighborhood since the date of valuation that a view would be prejudicial or of no value.
   d. Require that any objections to the admissibility of exhibits and/or comparable sales or other supporting data be heard and ruled upon prior to the impaneling of the jury.
   e. Require that all information relating to the specifics of comparable sales and the subject property be printed legibly on white paper so that same can be read by the jury when affixed to the bulletin board in its normal courtroom position and introduced into evidence. See Exhibit 1, page 86, for an outline as to the contents of such an exhibit.

The parties should prepare sufficient copies of said sales exhibit for the trial court judge, opposing counsel and each juror.

The above limitations and requirements are recited by the Commissioner in Department 43 and are incorporated in the first pretrial conference order to completely prepare the parties for the exercise of the trial
court's discretion pursuant to § 352, Evidence Code, where deemed appropriate.

*It is the policy of the Superior Court to eliminate unnecessary, cumulative, and/or repetitious evidence.*

For a form of a first pretrial conference order, see Exhibit 4, page 10.

*On occasion, parties will not stipulate that the Commissioner in Department 43 may hear the pretrial. Therefore, in order to aid judges who may be assigned to hear eminent domain pretrials, these resumes of the first and final pretrials and the mandatory settlement conference are included.*

**Appendix B**

**Final Pre-trial Order**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Plaintiff, vs. Defendants.

appeared as attorney for Plaintiff.

appeared as attorney for Defendant(s)

appeared as attorney for Defendant(s)

A final pretrial conference was held in the above-entitled cause before Honorable , Judge, on the day of , 19, and the following action was taken:

Pursuant to order of court, the parties have exchanged appraisal reports as of this date of final pretrial.

(or) Pursuant to order of court, the parties have not exchanged appraisal reports as of this date of final pretrial because (defendant did not submit a report for exchange) (the court did not order an exchange because defendant's appraisal report [owner's statement] did not comply with the requirements of Exhibit A of the Eminent Domain Policy Memorandum of the Superior Court Rules).

(where no exchange) The court has initialed the reports and statements for identification at the time of trial and returned same to the parties offering same. Except as set forth in Exhibit A of the Eminent Domain Policy Memorandum and except for the purpose of rebuttal, the parties may not be permitted to call any witness to testify on direct examination to an opinion of value, a sale, a reproduction study or capitalization study, unless same is submitted to the court as set forth in said Exhibit A.
Plaintiff's (defendant's) appraiser must provide additional data regarding

on or before 19, by direct mailing or delivery to adversary counsel.

The First Pretrial Conference Order filed on 19 is incorporated herein by reference and made a part of this final order.

A mandatory settlement conference is set for 19 at (a.m.) (p.m.) in Dept. Notice waived.

Trial remains set for 19 at 9:00 a.m. in Dept. 1. Notice waived.

The estimated time for the trial in chief is . The estimated time for the apportionment hearing pursuant to § 1246.1 C.C.P. is .

The court has previously inquired of the parties whether they would be willing to stipulate to a court trial without a jury, or, in the alternative, have a jury composed of 8 members. The parties will reply to the court's inquiry at the time of the mandatory settlement conference.

(or) Plaintiff and defendant(s) have executed a written stipulation, attached hereto, providing that the cause may be tried by Judge(s) sitting without a jury, providing said judge or judges is (are) available for assignment on the date of trial.

(or) Plaintiff and defendant(s) have executed a written stipulation, attached hereto, providing that the jury will be composed of 8 members, with a verdict rendered by 6 out of 8, 5 out of 7 or 4 out of 6 and providing for waiver of § 601 C.C.P. and agreement to 4 peremptory challenges each.

Dated:

__________________________
Judge