

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR12-13

Title	Action Requested
Civil Trials: Voir Dire Rules of Court	Review and submit comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rules 2.1034 and 3.1540	January 1, 2013
Proposed by	Contact
Civil and Small Claims Advisory Committee	Anne M. Ronan, 415-865-8933
Hon. Dennis N. Perluss, Chair	anne.ronan@jud.ca.gov

Executive Summary and Origin

Assembly Bill 1403 (Stats. 2011, chap. 409) amended the civil jury voir dire statute, Code of Civil Procedure section 222.5. The Civil and Small Claims Advisory Committee proposes amending the rules of court concerning jury selection in civil cases to conform to the statutory amendments and to delete those sections of the rules that are duplicative of or inconsistent with statutory provisions.

The Proposal

The California Rules of Court contain provisions concerning jury selection in civil actions in two places: in title 2, Trial Court Rules, and title 3, Civil Rules. AB 1403 made changes to the voir dire statute, Code of Civil Procedure section 222.5, that impact these rules of court. The rules must be amended to be consistent with the amended voir dire statute and also should be amended to delete any provisions that are duplicative of statutory provisions.

This proposal will

- move and renumber rule 2.1034 from its current location in title 2, Trial Court Rules, to title 4, Criminal Rules (as rule 4.202), so that it no longer applies to civil actions; and
- amend rule 3.1540 to delete all provisions inconsistent with or contained in Code of Civil Procedure section 222.5.

Rule 2.1034

AB 1403 added a statutory provision that a trial judge in a civil action “should allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

phase of the voir dire process.” The current rule 2.1034 states that a trial judge in any action “may, in his or her discretion, permit brief opening statements by the parties.” This rule is superseded in civil actions by the new statutory provision and should no longer be applied in those actions.

Rule 2.1034 is located in the rules of court at title 2, Trial Court Rules, and thus currently applies to both civil and criminal jury trials. (See rule 2.2 (rules in this title apply to all cases in the superior courts).) AB 1403, however, applies strictly to civil cases, offering no similar provision—nor any provision at all—for voir dire in criminal cases. Hence, while the current rule no longer applies in civil actions, it remains applicable in criminal actions. The advisory committee therefore recommends not deleting the rule altogether but rather moving it into title 4, Criminal Rules, so it will continue to apply in criminal actions. The committee also proposes renumbering it as rule 4.202, which will place it immediately following the other two rules applicable to jury selection in criminal actions.

Rule 3.1540

Rule 3.1540 applies to voir dire in civil actions only. There are several provisions within the current rule that are inconsistent with or duplicative of provisions in Code of Civil Procedure section 222.5 and therefore need to be deleted.

- **Rule 3.1540(b) (Examination by the trial judge)** will be changed in two places:
 - The first sentence, requiring that the judge examine prospective jurors orally or by written questionnaire or both, will be deleted as unnecessary. The statute already requires the judge to examine the prospective jurors, and no rule is needed to state which methods the judge is to use.
 - The last sentence, which provides that a judge “may” use the Judicial Council juror questionnaire form, will be removed in light of the new provision in section 222.5 that a judge “shall not arbitrarily or unreasonably refuse to submit reasonable written questionnaires” when requested by the parties.
- **Rule 3.1540(c) (Additional questions and examination by counsel)** will have its last two sentences deleted because they duplicate provisions of the statute:
 - The provision that the trial judge, on request of the parties, must permit counsel to question the jurors directly is contained in the first paragraph of section 222.5.
 - The provision that the scope of the questioning must be within reasonable limits prescribed by the judge at his or her discretion is contained at the beginning of the third paragraph of section 222.5. Moreover, that paragraph concludes with a new limitation on discretion added by AB 1403, which provides that a trial judge shall not establish a blanket time limit for voir dire.
- **Rule 3.1540(d) (Examination of juror outside the judge’s presence)** duplicates the provisions of the last paragraph of AB 1403 and will be deleted in its entirety.

Removing the duplicative provisions from the rules will clarify that the requirements and procedures are statutorily based and eliminate possible inconsistencies between statute and rule.

Alternatives Considered

The committee considered not amending the rules, but concluded that amendments were appropriate to make the rules consistent with the statute.

The group has also reviewed and considered possible amendments to the Standards of Judicial Administration relating to civil voir dire, but concluded that the statutory amendments did not require any revisions to the standards.

Implementation Requirements, Costs, and Operational Impacts

Because these proposed amendments do no more than align the rules with the current statute, they will not result in any additional implementation requirements or costs to the courts or parties.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- Considering that the new statutory provisions are already in effect, what, if any, would the implementation requirements be for courts arising from the proposed revisions to the rules? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amended rules 2.1034 and 3.1540, attached
2. Assembly Bill 1403 can be viewed at www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1401-450/ab_1403_bill_20111002_chaptered.pdf

Rule 2.1034 of the California Rules of Court would be moved and renumbered and rule 3.1540 amended, effective January 1, 2013, to read as follows:

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Title 2. Trial Court Rules

Division 8. Trials

Chapter 3. Conduct of Trials

Rule 2.1034. Statements to the jury panel

~~Prior to the examination of prospective jurors, the trial judge may, in his or her discretion, permit brief opening statements by counsel to the panel.~~

Comment

~~This statement is not a substitute for opening statements. Its purpose is to place voir dire questions in context and to generate interest in the case so that prospective jurors will be less inclined to claim marginal hardships.~~

Title 3. Civil Rules

Division 15. Trial

Chapter 4. Jury Trials

Rule 3.1540. Examination of prospective jurors in civil cases

- (a) Application** This rule applies to all civil jury trials.
- (b) Examination of jurors by the trial judge.** ~~To select a fair and impartial jury, the trial judge must examine the prospective jurors orally, or by written questionnaire, or by both methods. In examining prospective jurors in civil cases, the judge should consider the policies and recommendations in standard 3.25 of the Standards of Judicial Administration. The judge may use the Juror Questionnaire for Civil Cases (form MC-001).~~
- (c) Additional questions and examination by counsel.** On completion of the initial examination, the trial judge must permit counsel for each party that so requests to submit additional questions that the judge will put to the jurors. ~~On request of counsel, the trial judge~~

1 must permit counsel to supplement the judge's examination by oral and direct questioning of any
2 of the prospective jurors. The scope of the additional questions or supplemental examination
3 must be within reasonable limits prescribed by the trial judge in the judge's sound discretion.
4 ~~(d) Examination of juror outside the judge's presence~~ The court may, upon stipulation by
5 counsel for all parties appearing in the action, permit counsel to examine the prospective jurors
6 outside a judge's presence.

7 **Title 4. Criminal Rules**

8 **Division 3. Trials**

9 **Rule 4.202. Statements to the jury panel**¹

10 Prior to the examination of prospective jurors, the trial judge may, in his or her discretion, permit
11 brief opening statements by counsel to the panel.

12 **Comment**

13 This statement is not a substitute for opening statements. Its purpose is to place voir dire questions in
14 context and to generate interest in the case so that prospective jurors will be less inclined to claim
15 marginal hardships.

¹ The text of the rule and comment are identical to that currently at rule 2.1034. Only the number is changing.