



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 24, 2012

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| Title | Agenda Item Type |
| Civil Trials: Juror Questionnaire for Expedited Jury Trials | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Approve form MC-003 | July 1, 2012 |
| Recommended by | Date of Report |
| Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair | December 16, 2011 |
| | Contact |
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Executive Summary

The Civil and Small Claims Advisory Committee recommends approval of an optional juror questionnaire form for use in expedited jury trials.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve *Juror Questionnaire for Expedited Jury Trials* (form MC-003) as an optional form, for use effective July 1, 2012.

The proposed form is attached at page 6.

Previous Council Action

The Expedited Jury Trial Act (Assem. Bill 2284 [Evans]; Stats. 2010, ch. 674) went into effect on January 1, 2011, as did new rules of court adopted by the council to implement court procedures for the civil expedited jury trials. At that time, to facilitate jury selection in expedited

jury trials, the council adopted a rule limiting voir dire time and encouraging parties to submit a joint form questionnaire to be used with prospective jurors. (Cal. Rules of Court, rule 3.1548.)

Rationale for Recommendation

The goal of the new civil expedited jury trial procedures is to complete a trial in a single court day, if possible.. The expedited jury trial rules limit the time to be spent in selecting a jury, with each side limited to 15 minutes of voir dire. (Cal. Rules of Court, rule 3.1549.) The rule encourages the use of a form juror questionnaire in order to expedite the voir dire process. (*Id.*) The parties are also encouraged to agree in advance to the content of such a questionnaire and to submit it to the court as part of the pretrial submissions, to be considered by the court at the pretrial conference. (Cal. Rules of Court, rule 3.1548(b)(5) and (f)(7).)

The advisory committee¹ has developed the proposed one-page *Juror Questionnaire for Expedited Jury Trials* (form MC-003) to facilitate this process. The form would be optional, to be used at the discretion of the parties and the judicial officer.

The form begins with a paragraph of information and instructions for the potential juror, noting that the information on the form may become part of the public record and advising the prospective juror that items may be addressed directly with the court in private rather than answered on the sheet.

The proposed expedited jury trial questionnaire seeks information regarding the juror's age, residence, and ages of children, if any, as well as the occupation and employer of the juror and educational background. It also asks whether the juror has served on a jury before, has been involved in a lawsuit, or has experience in areas that might involve lawsuits. Finally, it asks whether there are any other matters that might affect the prospective juror's ability to understand the proceedings or to be fair and impartial, and if so, to explain.

The form is to be signed by the prospective juror under penalty of perjury.

¹ The advisory committee was assisted in developing this recommendation by the Small Civil Cases Working Group, chaired by Judge Mary Thornton House (Superior Court of Los Angeles County) and including members of the Civil and Small Claims Advisory Committee. The group's other members include Judge Stephen M. Moloney (Superior Court of Los Angeles County), Commissioner Douglas G. Carnahan (Ret., Superior Court of Los Angeles County), and attorneys Mr. Mark S. Adams, Mr. Paul Bigley, Mr. Christopher Dolan, Mr. Steven P. Goldberg, and Mr. Craig Sheffer. The following individuals have participated as liaisons to the working group: Mr. Michael Belote (California Defense Counsel), Mr. Saul Bercovitch (State Bar of California), Ms. Nancy Drabble (Consumer Attorneys of California), and Ms. Barbara Gaal (California Law Revision Commission). Representatives from key stakeholder groups include Ms. Erika Frank and Ms. Mira Guertin (California Chamber of Commerce), Ms. Kimberly Dellinger (Personal Insurance Federation of California), Mr. Jeffrey Fuller (Association of California Insurance Companies), Ms. Gail Hillebrand (Consumers Union), Ms. Kimberly Stone (Civil Justice Association of California), and Mr. Steve Suchil (American Insurance Association).

Comments Received, Alternatives Considered, and Policy Implications

Comments

The proposed form was circulated for public comment in spring 2011. Six comments were received, four from the Superior Courts of Los Angeles, Monterey, Sacramento, and San Diego Counties, and two from State Bar committees.²

The Superior Courts of Monterey and San Diego Counties and the State Bar Committee on the Administration of Justice agreed with the proposed form as circulated. The State Bar Litigation Section's Rules and Forms Committee and the Superior Court of Sacramento County agreed with the proposal generally but suggested some modifications. The Superior Court of Los Angeles County disagreed with the concept of the proposed form entirely and also disagreed with some of the individual items in the form.

Comments opposing the form altogether. The Superior Court of Los Angeles County disagreed that the proposed form would be helpful in expedited jury trials. The court expressed concerns concerning the time it will take jurors to complete the form and the lack of copying facilities in the courtrooms. The court contended that asking questions orally would be more efficient than using a form questionnaire.

The advisory committee considered these comments, but disagreed that they warranted not approving the form. Noting that the use of the form is optional and, as with other form questionnaires, at the discretion of the judicial officer, the committee concluded that the form may be useful in some cases. The form is very short—a single page—and can be printed on multipage carbon-embedded paper forms, which will produce carbon copies as the form is being completed. The pages would then be separated and given to the court and each party, eliminating the need for copying equipment or for the expenditure of time required if all parties had to review a single copy.

Comments on format and length. The Superior Court of Sacramento County commented that the two-page form circulated for comment (one page of introduction and instructions, similar to that on the current *Juror Questionnaire for Civil Cases* (form MC-001) and one page of questions) was too long. It proposed deletion of the introduction page and the addition of a small paragraph of instructions to the top of the questionnaire. The commentator's primary concern was that the form should be only a single page so that it can be printed on carbon-embedded paper more easily. To facilitate this single page format, the commentator suggested replacing the full page of instructions with a small box of the most pertinent instructions at the top of the page of questions, consolidation of certain questions onto a single line, and deletion of one question entirely.

² A chart summarizing the comments received and the committee's responses to each is attached at pages 7-10.

The advisory committee agreed that a single-page format would be easier and less expensive for courts and parties to use and has shortened the form accordingly.

Comments re content

- *Item 1.4 (on circulated form), regarding motor vehicles owned by the prospective juror.* The Superior Courts of Los Angeles County and Sacramento Counties opposed inclusion of this question. The Los Angeles court pointed out that it is an indirect way of asking about the juror's income and, as such, would be offensive to many jurors. The Sacramento County court noted that it is not actually a good indicator of income in any event, as low income people may drive expensive cars while high income people may drive old ones for a long time. The advisory committee concluded that the question should be removed from the form.
- *Item 8.1 (on circulated form), regarding sources of information.* This item asked how the prospective juror gets news and information, seeking the type of news sources although not the identity of specific sources. The Los Angeles County court objected to this item as invading First Amendment interests with, in most cases, no reason for doing so. While the committee did not agree that the question impinged on First Amendment rights, the group did conclude that, as suggested by the State Bar Litigation Section, in light of time and space constraints, there were better questions to include on the form, and so deleted the question regarding sources of information.
- *Item 10, regarding other lawsuits.* The Sacramento County court proposed simplifying the language of the question. The committee agreed.

Alternatives considered

Option 1 — Take no action. The advisory committee considered not recommending a form juror questionnaire at all, particularly in light of the comments received from the Superior Court of Los Angeles County. As discussed above, however, the committee concluded that the form questionnaire would be helpful in at least some expedited jury trials. In light of the optional nature of the form, which leaves it to each judicial officer whether to use it, and to each court whether to print copies in advance, the committee recommends that the council approve the form questionnaire.

Option 2 — Recommend two-page form. The form as originally circulated included a separate page with an introduction and instructions for the juror. This page was based on the introductory page in the form *Juror Questionnaire for Civil Cases* (form MC-001). The intent was to provide information to the potential jurors and to make the form consistent with the other Judicial Council juror questionnaires. As discussed above, the committee concluded that a single-page form, easier to complete and less expensive to produce, was a better alternative.

Option 3 — Recommend one-page form. For all the reasons discussed above, the advisory committee recommends the single-page form attached to this report.

Implementation Requirements, Costs, and Operational Impacts

The proposed form is optional, so no court is required to use it. Some courts have indicated that they make form juror questionnaires available to jurors on carbon-embedded paper. Should a court choose to do that with this form, the court will incur the cost of printing the form.

Attachments

1. Proposed form MC-003, at page 6
2. Chart of comments, at pages 7-10

JUROR QUESTIONNAIRE

PLEASE PRINT ALL ANSWERS LEGIBLY

To facilitate the jury selection process, provide the requested information under penalty of perjury. The completed questionnaire will be reviewed by all parties. The questionnaire is a public record and may be open to public inspection. If you believe that any question requires an answer that is too sensitive (personal or private) to be included in the public record, you have the right to request a private hearing, rather than writing the answer on the form. If you prefer to discuss this outside of the presence of other jurors, circle the question and write "P" (for "private") in the space for the answer.

General Information

- 1. **FULL NAME:** _____ 2. Age: _____
- 3. Area, neighborhood, or community in this county where you generally live *(do not give your street address)*:

House Apartment Own Rent

- 4. Do you have children? Yes No
If yes, how many? _____ Ages: _____

Employment

- 5. Are you employed? Yes No If yes, occupation: _____
Current employer: _____

Relationship Information

- 6. Are there other adults in your household? Yes No
If yes, their occupations: _____

Education

- 7. High school graduate: Yes No College graduate: Yes No Postgraduate degree: Yes No
- 8. If college or postgraduate degrees, degrees obtained: _____

Prior Jury Service

- 9. Have you served on a jury before? Yes No If yes: Civil Criminal

Other Experience

- 10. Have you, a relative, or a close friend ever sued anyone or been sued? Yes No If yes, describe:

- 11. Do you or does anyone close to you have training or expertise in any of the following areas *(check all that apply)*:

Evaluating claims for loss or damage Law enforcement
 Law Accident reconstruction or biomechanics
 Medicine Specialized training in _____

- 12. Is there any matter not covered by this questionnaire that could affect your ability to understand the proceedings or to be a fair and impartial juror? Yes No If yes, describe:

I declare under penalty of perjury under the laws of the State of California that the responses I have given on this questionnaire and on any attached sheets are true and correct to the best of my knowledge and belief.

(DATE)

(SIGNATURE OF JUROR)

SPR11-25**Civil Trials: Jury Questionnaire for Expedited Jury Trials** (approve form MC-003)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|--|
| 1. | State Bar of California, Committee on Administration of Justice By Saul Bercovitch | A | Committee of Administrator of Justice supports this proposal | No response required. |
| 2. | State Bar of California, Litigation Section By Reuben A. Ginsburg | AM | <p>The Rules and Legislation Committee agrees with the proposal, but suggests that the last question (which should be numbered 7.1 rather than 8.1) on form MC-003 on information sources should be replaced with a question more relevant to the fair administration of justice, such as:</p> <p style="padding-left: 40px;">“7.1 Is there any matter not covered by this questionnaire that could affect your ability to understand the proceedings or to be a fair and impartial juror?”</p> <p>This proposed language is derived from questions 1.27 and 1.33 on form MC-001. Other questions that we believe should be considered for inclusion on the form, space allowing, that would be more probative than the question on information sources are specific job duties and responsibilities (MC-001, No. 1.12); social, civic, professional, trade or other organizations (MC-001, No. 1.21); and feelings about damages awarded in lawsuits (MC-001, No. 1.31).</p> | The committee has modified the form in light of this comment, replacing the last question on the form as circulated, regarding sources of information, with the proposed item 7.1 in this comment. The committee has concluded that due to space constraints additional questions should not be included. Further, the committee concluded that many attorneys would prefer to ask the other proposed questions in person in light of the time constraints on jury selection in expedited jury trials. |
| 3. | Superior Court of Los Angeles County | | Los Angeles Superior Court (1) disagrees with the proposition that use of a jury questionnaire will assist in limiting the time to be spent in selecting a jury for an Expedited Jury Trial | The committee notes the court’s disagreement but has concluded that an optional one-page jury questionnaire form may be appropriate for some expedited jury trials. Use of this form, as of all |

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| | Commentator | Position | Comment | Committee Response |
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| | | | <p>(EJT); and (2) opposes use of the proposed form jury questionnaire, which inexplicably probes topics of inquiry that are not included in standard form jury questionnaires for use in ordinary trials.</p> <p>With respect to the first point, it will take jurors some time to fill out a questionnaire. After the questionnaires are completed, they will not be able to be copied, because trial courts typically do not have ready access to copy machines for use by the public. Presumably counsel will have to “take turns” examining the questionnaires and one or both counsel will have to take notes on the content of the questionnaires, or find some other way to share the questionnaires while conducting voir dire. This process is likely to consume most of the 30 minutes available for voir dire under the EJT procedures. Having jurors answer some basic questions orally for all to hear would be more expeditious.</p> <p>Regarding the proposed questionnaire’s unprecedented topics of inquiry, there is no reasonable basis for requiring prospective jurors to give the make, year and model of their automobile or to state what types of media they consume. Courts must be sensitive to the fact that jurors will believe they are under a legal requirement to answer the questions posed. It is imperative that the privacy rights of jurors be protected unless information is necessary to select an impartial jury. Asking a juror the make and model of his or her car is an indirect way of</p> | <p>form questionnaires, will be at the discretion of the judicial officer.</p> <p>The committee notes that the form, now modified to a single page, can be printed on paper with embedded carbons, allowing for copies to be created at the same time the form is completed. Hence, copies for counsel can be made without the need for copying machines</p> <p>The committee has modified the form in light of this comment and removed the questions regarding motor vehicle ownership and regarding media sources used by the prospective juror.</p> |

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Civil Trials: Jury Questionnaire for Expedited Jury Trials (approve form MC-003)

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| | Commentator | Position | Comment | Committee Response |
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| | | | asking the income of a juror. Such a question would be offensive to many jurors and this question is not justified by any particularized need specific to the nature of the litigation – by definition this is a “form questionnaire.” Similarly, jurors have a First Amendment interest in their selection of what to read. Before jurors are probed about the opinions they choose to consume, there should be some need specific to the subject matter of the litigation. | |
| 4. | Superior Court of Monterey County | A | No specific comments. | No response necessary. |
| 5. | Superior Court of Sacramento County By Hon. Brian Van Camp and Hon. Robert C. Hight | AM | <p>Our Court strongly encourages the Judicial Council to consolidate the proposed Questionnaire form to a single page. Not only would that save paper, but, by printing the form on “NCR” paper (paper with a built-in, embedded carbon/copying property), it would save copying time as well. The time required to send the Questionnaires out for copying and collating generally won’t be available in the Expedited Jury Trials.</p> <p>Our Court has used successfully such a form for all civil and criminal jury trials (we’ll send a sample by snail mail), and we believe a three-page form would suffice for the overwhelming majority of EJT’s—one copy for each side, and one for the court.</p> <p>Specific suggestions:</p> <ol style="list-style-type: none"> 1. Eliminate the first page, “Introduction and Instructions.” The text is largely fluff and/or duplicative of what the judge will orally instruct anyway. Add the following language at | The committee agrees that the concept of printing the form so that several copies can be produced as the form is completed is desirable. Further, while the committee understands that such paper can be printed on both sides, which would allow the form to have instructions on one side and the questions on the other, the committee also recognizes that such double-sided printing can be a substantial additional expense. Hence, the committee has modified the form to permit it to fit on a single page by following several of the suggestions in this comment, including narrowing the instructions and combining several questions so that they use fewer lines on the form. |

SPR11-25**Civil Trials: Jury Questionnaire for Expedited Jury Trials (approve form MC-003)**

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| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|--|
| | | | <p>the top of the single page Questionnaire: “Please answer these questions completely and under penalty of perjury. Your written answers will become a matter of public record; therefore, if you wish to answer in confidence to the judge, write a “P” beside the question, instead. Thank you for serving.”</p> <p>2. At the end of the first line (“FULL NAME”), place the word “Age,” and leave room for their answer. Then delete question (“1.1 Age”)--a full line is not needed to write a two-digit number.</p> <p>3. Delete Question 1.4 regarding motor vehicles, as insufficiently relevant. Lots of people without visible means of support drive Escalades, and, until he auctioned it off for charity, Warren Buffett drove around in an old, well-used Lincoln.</p> <p>4. Strike 4.1 through 4.3 and replace with one line, to wit: “State highest education achieved: High School (box) College (box) Post-grad (box)”</p> <p>5. Re-state 6.1, in plainer language: “Have you, a relative or close friend ever sued anyone or been sued?”</p> <p>6. In the jurat (“I declare under penalty of perjury...”), put a comma after “true and correct, to the best....”</p> | <p>The form has been modified as suggested.</p> <p>The question regarding motor vehicles has been deleted.</p> <p>The questions regarding education have been condensed to only two lines.</p> <p>The suggested language has been used.</p> <p>In order to maintain consistency with the other jurats, the committee concludes that no comma should be added</p> |
| 6. | Superior Court of San Diego County By Michael Roddy, Executive Officer | A | No specific comments. | No response required. |