



New Jersey Courts

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Jury Selection Updates: (1) Strategies to Address Bias; (2) Amendments to Court Rules; and (3) New Rule 1:8-3A

August 2022

Background

The Supreme Court in State v. Andujar (2021) called for a Judicial Conference on Jury Selection to examine current processes and develop recommendations for improvements, including ways to reduce the effects of bias in jury selection.

The Court conducted the Conference in November 2021, bringing together members of the New Jersey bar and public, national experts on jury processes, and three Chief Justices from other states that have undertaken jury reform.

Background

The Conference yielded preliminary suggestions as to how to:

- Engage more eligible people as jurors;
- Support more effective voir dire; and
- Mitigate against the effects of discrimination and bias.

Background

A Judicial Conference Committee comprised of Executive Branch and Legislative Branch leaders, justices, judges, and legal and community stakeholders worked for months to develop recommendations on the topics highlighted in Andujar and discussed at the Conference.

Background

As recommended by the broad membership of the Judicial Conference Committee, the Court in July 2022 authorized a package of 25 reforms.

This presentation focuses on certain reforms effective in all civil and criminal jury trials as of September 1, 2022, plus a new Court Rule on objections to peremptories that will be effective in some criminal trials in September and for all trials as of January 1, 2023.

Overview

1. Implementation of Strategies to Interrupt Implicit Bias
 - Juror Impartiality Video
 - Enhancements to Model Jury Instructions
 - Voir Dire Questions on Implicit Bias
2. Amendments to Court Rules
 - Liberal standard for for-cause challenges
 - Expanded petit jury list (Rule 1:8-5 list)
 - Confidentiality of jury records
3. New Rule 1:8-3A ("Reduction of Bias in the Exercise of Peremptory Challenges")

Strategies to Interrupt Juror Implicit Bias

Juror Impartiality Video

Effective September 1, 2022, jurors who report for in-person service will view a [video](#) (“New Jersey Judiciary: Supporting Juror Impartiality”) as shown at the Judicial Conference.

The video will be shown to jurors before the judge reads the preliminary instructions.

Enhancements to Model Jury Instructions

To increase juror awareness of implicit bias, and to offer strategies for jurors to recognize and interrupt the influence of potential biases, the model jury instructions have been updated at three points:

- Preliminary instructions;
- Instructions after the jury is sworn; and
- Instructions before deliberations.

Enhancements to Model Jury Instructions

The amendments to the model charges are designed to support each juror's individual capacity to self-check and self-monitor in order to avoid implicitly biased thought processes and decision-making.

The updated model charges have been published by notice to the bar and posted on the Judiciary's website.

New Model Voir Dire Questions

All Civil and Criminal Judges who conduct standard, judge-led voir dire are responsible to ask two additional questions to prospective jurors:

- Question 1: In the juror orientation video and my introductory remarks, the concept of implicit bias was defined and discussed. In light of that information, do you think you will be able to decide the case fairly and impartially? Please explain.

New Model Voir Dire Questions

- Question 2: Some of the witnesses, parties, lawyers, jurors, or other people involved with this case may have personal characteristics (such as their race, ethnicity, or religion) or backgrounds different from yours, or they may be similar to yours. Would those differences or similarities make it difficult for you to decide this case impartially based solely on the evidence and the law? Please explain.

Note: The new questions do not extend to cases in the attorney-conducted voir dire pilot program.

Court Rule Amendments – Effective September 1, 2022

Amendments to Rule 1:8-3

The Court has amended Rule 1:8-3 (“Examination of Jurors; Challenges”) to formalize a **liberal** standard for a juror to be excused for cause.

- All such challenges shall be tried by the court on the record and outside the hearing of the other jurors. The court shall require the party challenging the juror to state the basis for the challenge and shall permit the other party or parties to state their position. If the court finds there is a reasonable basis to doubt that the juror would be fair and impartial, the court shall grant the for-cause challenge and state the reason for its determination.

Amendments to Rule 1:8-5

Rule 1:8-5. Availability of Petit Jury List

- The list of the general panel of petit jurors, including jurors who have been disqualified, excused, or deferred, as well as jurors who are scheduled to report for selection, shall be made available by the clerk of the court to any party requesting the same at least 10 days prior to the date fixed for trial. Such lists shall not be provided to anyone who is not a party to the case. Any provision of juror lists shall be subject to a prohibition against unauthorized use or dissemination.

Amendments to Rule 1:8-5

In all Civil and Criminal jury trials, the standard petit jury list (Rule 1:8-5 list) will include:

- The traditional list of jurors who have confirmed that they are qualified and will report for service;

AND

- Jurors who have been dismissed for lack of qualification;
- Jurors who have been excused on statutory grounds; and
- Jurors who have been deferred to a future date.

Amendments to Rule 1:38-5(g)

Rule 1:38-5. Administrative Records Excluded from Public Access

(g) Records used to compile juror [Juror] source lists, and the list prepared pursuant to N.J.S.A. 2B:20-2[,]; jury qualification questionnaires completed pursuant to N.J.S.A. 2B:20-3, any other questionnaires completed by prospective jurors, and individual juror information maintained by the Judiciary[,]; and [preliminary] lists prepared pursuant to N.J.S.A. 2B:20-4 of persons [to be] summoned for possible service as grand or petit jurors, which shall remain confidential, except as provided in Rule 1:8-5, unless otherwise ordered by the Administrative Director of the Courts [Assignment Judge];

Amendments to Rule 1:38-5(g)

The amendments to Rule 1:38-5(g) ensure the confidentiality of specific types of juror records, including:

- Individual information about jurors, including demographic information (currently collected in Bergen, Camden, and Middlesex and to be collected statewide in 2023); and
- All types of juror questionnaires, including the new case-specific electronic questionnaires used in the ACVD pilot cases.

New Rule 1:8-3A

New Approach to Contested Peremptories

In addition to the Court Rule amendments effective September 1, 2022, the Court has adopted new Rule 1:8-3A (“Reduction of Bias in the Exercise of Peremptory Challenges”).

The new rule is effective in the ACVD pilot cases as of September 1, 2022, and statewide as of January 1, 2023.