

## **NOTICE TO THE BAR**

### **Supreme Court Administrative Determinations on Report of the Special Committee on Peremptory Challenges and Jury Voir Dire**

The Supreme Court, having considered the report and recommendations of its Special Committee on Peremptory Challenges and Jury Voir Dire, issues this set of administrative determinations on the Special Committee's ten specific recommendations.

#### **Executive Summary**

The Court has approved Recommendations 1 through 7, subject to some refinements to the language of the five proposed standards contained in Recommendation 1, as set forth below. The Court has directed the Administrative Director of the Courts to take the steps necessary to effectuate the approvals.

The Court has taken no action at the present time in respect of Recommendations 8 through 10. It will revisit those recommendations at a later date, as set forth below.

#### **Approved Recommendations**

##### **Recommendation 1. Jury Selection Standards.**

The Court approved, as revised, the set of five Jury Selection Standards proposed by the Special Committee to improve jury selection and make it more uniform statewide. Further, the Court has directed the Administrative Director to issue the Jury Selection Standards to all trial court judges, with the standards accompanied by the extensive commentary developed by the Special Committee.

The five approved Jury Selection Standards are as follows:

**Standard 1. Voir Dire Method.** The method chosen to conduct voir dire must ensure a thorough inquiry into the relevant attitudes of prospective jurors so the court and counsel can identify and excuse those who may possess a bias, prejudice, or unfairness in connection with the matter before the court.

**Standard 2. Standard Questions.** When questioning prospective jurors, the judge must include the model jury selection questions approved by the Supreme Court and promulgated by the Administrative Director for that type of trial.

**Standard 3. Supplemental Questions.** Counsel shall submit any relevant supplemental questions for the court's consideration at the pre-voir dire conference. The judge shall review all proposed questions and shall determine on the record which to include.

**Standard 4. Attorney Participation.** If requested by counsel, the judge should, in the sound exercise of his or her discretion, permit at least some participation by counsel in the questioning of jurors.

**Standard 5. Challenges for Cause.** Judges shall excuse prospective jurors for cause, either sua sponte or on a party's request, when it appears that the prospective juror will not be fair and impartial.

##### **Recommendation 2. Standing Committee.**

The Court approved the recommendation to establish a standing committee. It will be called the Supreme Court Committee on Jury Selection in Criminal and Civil Trials and will provide continuing oversight in this important area. The oversight shall include working with the Administrative Director of the Courts and Administrative Office of the Courts staff on the implementation of the recommendations approved here by the Court. The committee also shall have responsibility for continuing to ensure uniformity in practices statewide and to address other jury-related areas as set forth in detail in the Special Committee's report. The Court has directed the Administrative Director of the Courts to take the steps necessary to create the standing committee as soon as possible.

### Recommendation 3. Jury Selection Manual.

The Special Committee recommended that the Court authorize development of a jury selection manual to address the specifics of jury selection. The manual would have as its intended audience both judges and attorneys. The Court approved the recommendation and has directed the Administrative Director of the Courts to take the steps necessary to develop the manual.

### Recommendation 4. Revisions to Standard Questions.

The Administrative Director will promulgate the Standard Questions referenced in approved Standard 2 above. The Court approved the recommendation that the new standing Committee on Jury Selection in Criminal and Civil Trials be given authority to propose revisions to the standard jury selection questions to be promulgated by the Administrative Director, as well as to propose new standard questions to cover additional case types.

### Recommendation 5. Training Program for Judges.

The Court approved the Special Committee's recommendation on the development of a jury selection training program for judges. The program should include existing training provided to new judges and/or at the annual Judicial College, as well as a continuing education component for judges assigned to the Civil and Criminal Divisions. The Supreme Court Committee on Judicial Education, working in conjunction with the Administrative Office of the Courts, is to develop and implement this multi-component judicial training program

### Recommendation 6. Training Program for Attorneys.

The Court approved the recommendation that the new standing committee be directed to develop a jury selection training program for attorneys. The standing committee shall work in conjunction with the Administrative Director of the Courts and AOC staff, with input from the bar, in developing this training program.

### Recommendation 7. Expansion of Rule 1:8-3(f) Conference.

The Court approved the Special Committee's recommendation for amendments to Rule 1:8-3(f) regarding the pre-trial voir dire conference to include submission by attorneys of written proposed voir dire questions, and to require the trial judge to rule on the proposed questions on the record. On July 27, 2006, the Court adopted those amendments as part of the omnibus rule amendment order, to be effective September 1, 2006.

## **Recommendations Held**

The Court has taken no action on Recommendations 8 through 10. Recommendation 8 would reduce the number of peremptory challenges in criminal trials; Recommendation 9 would make reductions in the number of challenges in civil trials. Recommendation 10 would amend Rule 1:8-3(c) to authorize a trial judge to be able to decrease or to increase the number of peremptory challenges available to the parties in multiple party trials.

The basis for the Court's withholding action on these three recommendations is to allow for the accrual of experience under the procedures and standards that are being implemented as a result of the Court's approval of Recommendations 1 through 7. This will enable an appropriate evaluation of their effectiveness. The Court anticipates that this process will

take approximately one year. At that time the Administrative Director of the Courts will submit to the Court a report and recommendations, which shall include a formal evaluation of the impact of the new procedures and standards. The Court's review of that report will include further consideration of Recommendations 8 through 10.

### **Note of Appreciation**

The Court wishes to express its deep appreciation to the members of the Special Committee on Peremptory Challenges and Jury Voir Dire, as well as the committee's staff. In addition, the Court gives special thanks to Appellate Division Judge Joseph Lisa, who chaired the committee.

Dated: September 15, 2006

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