

**ESOLUTION 4-08-03**

**DIGEST**

Misdemeanor Trials: Number of Jurors

Amends Code of Civil Procedure section 220 to provide that a misdemeanor trial shall be heard by a jury of six.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Code of Civil Procedure section 220 to provide that a misdemeanor trial shall be heard by a jury of six. This resolution should be disapproved because it would decrease the fairness and consistency of the decision-making process.

The intent of the resolution—to provide for more jury trials and ease the burden on courts—is commendable. Decreasing the number of jurors, however, is not an acceptable way to accomplish this goal. The six-member misdemeanor jury withstood constitutional attack in *Williams v. Florida* (1970) 399 U.S. 78. That finding was affirmed in *Ballew v. Georgia* (1978) 435 U.S. 223, which rejected juries any smaller than six. The latter court found that studies conducted since *Williams* had raised serious concerns that the effectiveness and fairness of a jury decreases as the number of jurors decreases. (*Id.* at pp. 232-233.) Juries of six persons are more likely to be dominated by one or two strong personalities having a disproportionate effect on the deliberative process and the opinions of the others. (*Id.* at p. 236.) Moreover, as juries decrease in size, they tended to be less diverse and less likely to overcome the biases of their members. (*Id.* at pp. 233, 236-237.)

Although it may be tempting to decrease the number of jurors based upon the relative gravity of felonies and misdemeanors, “[t]he problem with this argument is that the purpose and functions of the jury do not vary significantly with the importance of the crime.” (*Id.* at p. 240.) Misdemeanor defendants have the same interest in the careful determination of their innocence or guilt as those charged with felonies, and they should therefore retain the right to trial by a jury of the same complement. This is because the effects of any criminal conviction—even a misdemeanor—on civil liberties, employment prospects, and other aspects of the defendant’s life can be significant. Also, the decision on whether an offense should be charged as a felony or a misdemeanor often varies from one jurisdiction to another. Under this resolution, culpability for the same conduct would be determined by different numbers of jurors in different jurisdictions. This would likely lead to inconsistent results and engender countless equal protection challenges.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 220 to read as follows:

1     §220  
2             A trial by jury shall consist of 12 persons, except that in civil actions ~~and cases of~~  
3 ~~misdemeanor~~, it may consist of 12 or any number less than 12, upon which the parties may agree,  
4 and in a trial by jury in cases of misdemeanor it shall consist of 6 persons.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Fernando Valley Bar Association Conference of Delegates

#### STATEMENT OF REASONS

Existing Law: Permits a trial by jury in a civil action and misdemeanor cases to consist of less than 12 jurors if the parties agree, and requires a jury of 12 persons in other cases which proceed with a trial by jury.

This Resolution: Requires a jury trial in misdemeanor cases to be six persons as opposed to allowing the option, upon agreement by the parties, for the number of persons to be 12 or any number less than 12.

The Problem: The courts have an increasingly difficult time providing a sufficient number of people to serve on trials. Parties may already agree to a jury of any number less than 12 persons in misdemeanor cases. This resolution would require that the number of jurors in a misdemeanor case be set at six. This would "free-up" the number of people available to sit on other matters.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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#### COUNTERARGUMENTS

##### **BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY:**

Any criminal conviction, even a misdemeanor, can result in serious, life changing consequences. Misdemeanors are not minor offenses. In California, conviction of a single misdemeanor offense, depending on the crime, can result in a county jail commitment for up to a year. For multiple convictions in a single trial, consecutive sentencing can result in sentences of several years. Examples of significant possible collateral consequences of misdemeanor convictions are lifetime registration as a sex offender (Penal Code Section 290), registration as a narcotics offender (Health & Safety Code Section 11590), and loss of the right to own or possess a firearm (Penal Code Section 12021(c)(1)). In addition, the immigration consequences to non citizens can be catastrophic.

##### **SAN DIEGO COUNTY BAR ASSOCIATION**

The proposed resolution would require a jury trial in misdemeanor cases to be comprised of six jurors rather than twelve. The proponent alleges that this resolution is necessary because "the courts have an increasingly difficult time providing a sufficient number of people to serve on trials." Yet the proponent cites nothing factually to support this statement. In sum, this resolution should not be passed because it deprives California citizens of an important right for no substantial reason.

##### **BAR ASSOCIATION OF SAN FRANCISCO**

This measure reflects a false economy. It will be much more difficult to achieve juries of diverse

backgrounds with only six jurors. Moreover, many misdemeanors have very serious consequences in people's lives, including driving licenses, employment, education, and domestic relations. Fully half of the accused in California are not citizens, and many misdemeanors have devastating immigration consequences. To cut down on due process in favor of assembly line justice is a bad idea.

#### **SANTA CLARA COUNTY BAR ASSOCIATION**

A trial by jury is one of the most significant constitutional rights in the United States. It is of paramount importance that persons facing criminal prosecution receive a fair trial. Although some misdemeanor offenses are not of a serious nature, often misdemeanor convictions can have serious consequences. For example, a conviction of a misdemeanor offense may result in incarceration in a county jail, registration as a sex offender for life, a presumption against having custody of one's children, the loss of the right to own a firearm, exclusion or deportation from the United States or denial of citizenship, loss of employment, etc.

There is a reason the number of jurors is set at 12. A jury of 12 persons is meant to ensure that there is sufficient deliberation of the matter. Twelve persons will inherently discuss a matter more thoroughly than six. It is the deliberation of jurors that ensures fairness in the judicial system. Accordingly, this resolution should not be approved.