

**RESOLUTION 09-22-06**

**DIGEST**

Criminal Trials: Jury Voir Dire

Amends Code of Civil Procedure section 223 to allow examination of prospective jurors in aid of peremptory challenges.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Code of Civil Procedure section 223 to allow the examination of prospective jurors in aid of peremptory challenges. This resolution should be approved in principle because examination in aid of peremptory challenges is necessary in order for counsel to properly and intelligently exercise such challenges.

As the California Supreme Court stated in *People v. Williams* (1981) 29 Cal.3d 392, peremptory challenges are of little value to the accused or the state if counsel is forced to utilize them unaided by relevant information. The current restriction to examination in aid of challenges for cause impairs the right to exercise peremptory challenges, and thus the right to a fair trial before an impartial jury.

**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 223 to read as follows:

- 1    § 223
- 2           In a criminal case, the court shall conduct an initial examination of prospective
- 3 jurors. The court may submit to the prospective jurors additional questions requested by the
- 4 parties as it deems proper. Upon completion of the court's initial examination, counsel for
- 5 each party shall have the right to examine, by oral and direct questioning, any or all of the
- 6 prospective jurors. The court may, in the exercise of its discretion, limit the oral and direct
- 7 questioning of prospective jurors by counsel. The court may specify the maximum amount
- 8 of time that counsel for each party may question an individual juror, or may specify an
- 9 aggregate amount of time for each party, which can then be allocated among the prospective
- 10 jurors by counsel. Voir dire of any prospective jurors shall, where practicable, occur in the
- 11 presence of the other jurors in all criminal cases, including death penalty cases. ~~Examination~~
- 12 ~~of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.~~
- 13           The trial court's exercise of its discretion in the manner in which voir dire is
- 14 conducted, including any limitation on the time which will be allowed for direct questioning
- 15 of prospective jurors by counsel ~~and any determination that a question is not in aid of the~~

16 ~~exercise of challenges for cause~~, shall not cause any conviction to be reversed unless the  
17 exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13  
18 of Article VI of the California Constitution.

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

PROPONENT: Los Angeles County Bar Association

#### STATEMENT OF REASONS

Existing Law: Specifies that the examination of prospective jurors may only be utilized in aid of the exercise of challenges for cause.

This Resolution: Would allow questioning of jurors in aid of both peremptory challenges and for cause.

The Problem: “Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled. [Citation.] Similarly, lack of adequate voir dire impairs the defendant's right to exercise peremptory challenges where provided by statute or rule.” (*Rosales-Lopez v. United States* (1981) 451 U.S. 182, 188.)

Limiting voir dire only to challenges for cause unfairly restricts the ability of both the prosecution and defense to excuse jurors who cannot and should not sit. Courts spend too much time arguing over whether or not a particular question is or is not for cause. Fundamental fairness as well as Constitutional imperatives require questions be allowed to aid in the intelligent exercise of peremptory challenges. This change would require a 2/3 vote of the Legislature.

#### IMPACT STATEMENT

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

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