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SB-658 Jury selection. (2017-2018)

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Senate Bill No. 658

CHAPTER 337

An act to amend Section 222.5 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 27, 2017. Filed with Secretary of State September 27, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 658, Wiener. Jury selection.

The Trial Jury Selection and Management Act, among other things, requires a trial judge to examine the prospective jurors in civil jury trials. The act gives the counsel for each party, after this initial examination, the right to examine any of the prospective jurors, as specified, in order to enable counsel to intelligently exercise both peremptory challenges and challenges for cause. The act prohibits a court from arbitrarily or unreasonably refusing to submit a reasonable written questionnaire to the jury if requested by counsel and states that the parties should be provided reasonable time to evaluate the responses to the questionnaire, if utilized, before oral questioning commences. The act states that the trial judge should consider, among other criteria, any unique or complex elements in the case when exercising his or her discretion as to the form and subject matter of voir dire questions.

This bill would require that the parties be provided reasonable time to evaluate the responses to a questionnaire, if utilized, before oral questioning commences. The bill would authorize the parties to submit questions to the trial judge before he or she conducts voir dire and authorize the judge to include these questions if he or she deems them proper. The bill would modify the scope of questioning allowed by the parties, require a trial judge to consider specific factors in conducting voir dire, and prohibit the judge from establishing an inflexible time limit policy for voir dire. The bill would also require a judge in civil trials to, at the earliest practical time, provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 222.5 of the Code of Civil Procedure is amended to read:

222.5. (a) To select a fair and impartial jury in a civil jury trial, the trial judge shall conduct an initial examination of prospective jurors. At the final status conference or at the first practical opportunity prior to voir dire, whichever comes first, the trial judge shall consider and discuss with counsel the form and subject matter of voir dire questions. Before voir dire by the trial judge, the parties may submit questions to the trial judge. The trial judge may include additional questions requested by the parties as the trial judge deems proper.

(b) (1) Upon completion of the trial judge's initial examination, counsel for each party shall have the right to examine, by oral and direct questioning, any of the prospective jurors in order to enable counsel to intelligently exercise both peremptory challenges

and challenges for cause. The scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the judge's sound discretion subject to the provisions of this chapter. During any examination conducted by counsel for the parties, the trial judge shall permit liberal and probing examination calculated to discover bias or prejudice with regard to the circumstances of the particular case before the court. The fact that a topic has been included in the trial judge's examination shall not preclude appropriate followup questioning in the same area by counsel. The trial judge shall permit counsel to conduct voir dire examination without requiring prior submission of the questions unless a particular counsel engages in improper questioning.

(2) The trial judge shall not impose specific unreasonable or arbitrary time limits or establish an inflexible time limit policy for voir dire.

(3) For purposes of this section, an "improper question" is any question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law.

(c) (1) In exercising the judge's sound discretion, the trial judge shall give due consideration to all of the following:

(A) The amount of time requested by trial counsel.

(B) Any unique or complex elements, legal or factual, in the case.

(C) Length of the trial.

(D) Number of parties.

(E) Number of witnesses.

(F) Whether the case is designated as a complex or long cause.

(2) As voir dire proceeds, the judge shall permit supplemental time for questioning based on any of the following:

(A) Individual responses or conduct of jurors that may evince attitudes inconsistent with suitability to serve as a fair and impartial juror in the particular case.

(B) Composition of the jury panel.

(C) An unusual number of for cause challenges.

(d) Upon the request of a party, the trial judge shall allow a brief opening statement by counsel for each party prior to the commencement of the oral questioning phase of the voir dire process.

(e) In civil cases, the trial judge may, upon stipulation by counsel for all the parties appearing in the action, permit counsel to examine the prospective jurors outside a judge's presence.

(f) A trial judge shall not arbitrarily or unreasonably refuse to submit reasonable written questionnaires, the contents of which are determined by the court in its sound discretion, when requested by counsel. If a questionnaire is utilized, the parties shall be given reasonable time to evaluate the responses to the questionnaires before oral questioning commences.

(g) To help facilitate the jury selection process, at the earliest practical time, the judge in a civil trial shall provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called.