

Jury Selection (Important Changes)

Code of Civil Procedure section 223: The Legislature repealed the existing Code of Civil Procedure section 223 that governed criminal jury voir dire and replaced it with a new version. The new version is similar to voir dire in civil cases, meaning that it's more generous for attorneys.

The new version continues to state, as did the repealed version, that the purpose of voir dire is in the aid of challenges for cause, not peremptory challenges. The new version defines an "improper question" for purpose of voir dire as one that "has as its dominant purpose, the attempt to precondition the prospective jurors to a particular result or indoctrinate the jury."

The new version of CCP section 223 states that upon completion of the trial judge's initial examination, counsel for each party shall have the right to examine the prospective jurors, and that the scope of this examination shall be within reasonable limits prescribed by the trial judge within the judge's discretion. But the new version also states that the trial judge shall not impose specific, unreasonable or arbitrary time limits or establish an inflexible time limit policy for voir dire. The new version also allows for supplemental time where the responses of the prospective juror reveal that this juror may be unsuitable to serve.

The new version of CCP section 223 also expressly states that the trial judge shall permit "liberal and probing examination" calculated to discover bias or prejudice. It says the fact that a topic was already covered in the trial judge's voir dire does not preclude appropriate follow-up questioning by counsel.

The new version states: "In exercising the judge's sound discretion, the trial judge shall consider all of the following: (1) The amount of time requested by trial counsel; (2) Any unique or complex legal or factual elements in the case; (3) The length of the trial; (4) The number of parties; (5) The number of witnesses."

The new version requires the court "shall, in his or her sound discretion," consider reasonable written questionnaires when requested by counsel. If a questionnaire is used, the parties shall be given reasonable time to evaluate the responses on the questionnaire before oral questioning starts.

The new version of CCP section 223 also says that to help facilitate the jury selection process, the trial judge, at the earliest practical time, "shall provide the parties with the list of prospective jurors in the order in which they will be called."

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