

CA Rule of Court §4.200(a)

The court must conduct a conference with counsel to discuss:

- Outline of case, witness names, Plaintiff's theory, etc.
- Jury Selection:
 - Procedure for deciding hardship and challenges for cause
 - Areas of inquiry during voir dire by court and time limits
 - Method of selection (6-pack, Covid, etc)
 - Number of alternates
 - Procedure for Batson/Wheeler objections

CCP §223 & Rule of Court §4.201

The court shall conduct an initial exam of prospective jurors, either orally or by written questionnaire or both

Court can control time limits on counsel but cannot establish an inflexible time limit policy

Judge shall permit liberal & probing examination designed to discover bias or prejudice about the case and parties

Judge shall permit supplemental time for questioning based on responses or conduct of jurors that may impact suitability to serve fairly and impartially

CCP §223

“Examination of prospective jurors shall be conducted only in the aid of the exercise of challenges for cause.”

Improper – Questions with the dominant purpose of attempting to precondition the jurors to a particular result or to indoctrinate the jury; sometimes done by asking the prospective jurors to prejudge the evidence

AB 3070 / CCP § 231.7

- Legislation lists several justifications as presumptively invalid and provides remedy for conscious and unconscious bias in use of peremptories.
- Intent of legislature that statute be broadly interpreted to eliminate use of group stereotypes and discrimination.
- January 2022 (Criminal only; civil in 2026)

AB 3070 / CCP § 231.7(a)/(b)

- Race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any
- A party or trial judge may object to improper use of peremptory challenge
- Objection to be made before jury impaneled, unless information becomes known that could not have reasonably been known before
- After objection, further discussion SHALL be outside jury panel's presence

AB 3070 / CCP § 231.7(e)

A peremptory challenge for any of the following reasons is **presumed to be invalid** unless the party exercising the peremptory challenge can show by **clear and convincing evidence** that an objectively reasonable person would view the rationale as unrelated to a cognizable group, and the reasons articulated bear on the prospective juror's ability to be fair and impartial in the case:

AB 3070 / CCP § 231.7(e)

- (13) Any justification that is similarly applicable to a questioned juror, who are not members of same cognizable group as challenged juror, but were not the subject of a peremptory challenge by that party.
- (12) A juror's apparent friendliness with another juror of the same group as listed in subdivision (a).
- (11) Lack of employment or underemployment of the juror or juror's family member.
- (10) Employment in field disproportionately occupied by members listed in subdivision (a) or serves a population disproportionately comprised of members of a group listed in subdivision (a).
- (9) Dress, attire, or personal appearance.

AB 3070 / CCP § 231.7(e)

- (8) The ability to speak another language.
- (7) Not being a native English speaker.
- (6) Receiving state benefits.
- (5) Having a child outside of marriage.
- (4) A juror's neighborhood.
- (3) Having a close relationship with people who have been stopped, arrested, or convicted of a crime.
- (2) Expressing a belief that law enforcement officers engage in racial profiling or that criminal laws have been enforced in a discriminatory manner.
- (1) Expressing a distrust of or having a negative experience with law enforcement or the criminal legal system.

AB 3070 / CCP § 231.7(f)

For purposes of subdivision (e), “clear and convincing” refers to degree of certainty factfinder must have in determining whether reasons given for peremptory challenge are unrelated to the cognizable group, **bearing in mind conscious and unconscious bias.**

To determine that a presumption of invalidity has been overcome, factfinder shall determine it is highly probable the reasons given for the peremptory challenge are **unrelated to conscious or unconscious bias** and are instead specific to the juror and bear on juror’s ability to be fair and impartial in the case.

AB 3070 / CCP § 231.7(g)

(1) The following reasons for peremptory challenges have historically been associated with improper discrimination in jury selection:

(A) Juror was inattentive, staring, or failing to make eye contact.

(B) Juror exhibited a lack of rapport, problematic attitude, body language, or demeanor.

(C) Juror provided unintelligent or confused answers.

(2) Reasons set forth in paragraph (1) are presumptively invalid unless court is able to confirm asserted behavior occurred based on court's own observations or observations of objecting counsel. Even with that confirmation, counsel offering the reason shall explain why asserted demeanor, behavior, or manner in which the prospective juror answered questions matters to the case.

AB 3070 / CCP § 231.7(h)

Remedies are one or more of the following:

- (1) Quash venire and start jury selection anew. This remedy shall be provided if requested by the objecting party.
- (2) If motion granted after jury impaneled, declare a mistrial and select new jury if requested by defendant.
- (3) Seat the challenged juror.
- (4) Provide objecting party additional challenges.
- (5) Provide another remedy as the court deems appropriate.