

## BILL TEXT:

## STATE OF NEW YORK

11715

## IN ASSEMBLY

June 20, 2008

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Weinstein)  
-- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules and the judiciary law,  
in relation to jury selection

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 4106 of the civil practice law and rules, as  
2 amended by chapter 336 of the laws of 1972, is amended to read as  
3 follows:

4 § 4106. Alternate jurors. Unless the court, in its discretion, orders  
5 otherwise, one or two additional jurors, to be known as "alternate  
6 jurors", may be drawn upon the request of a party. Such jurors shall be  
7 drawn at the same time, from the same source, in the same manner, and  
8 have the same qualifications as the regular jurors, and be subject to  
9 the same examinations and challenges. They shall be seated with, take  
10 the oath with, and be treated in the same manner as the regular jurors,  
11 except that after final submission of the case, the court [~~shall~~ may,  
12 upon consent of all parties, discharge the alternate jurors. If, before  
13 the final submission of the case, a regular juror dies, or becomes ill,  
14 or for any other reason is unable to perform his or her duty, the court  
15 may order him or her to be discharged and draw the name of an alternate,  
16 who shall replace the discharged juror in the jury box, and be treated  
17 as if he or she had been selected as one of the regular jurors.

18 § 2. The civil practice law and rules are amended by adding a new  
19 section 4107-a to read as follows:

20 § 4107-a. Procedures for questioning, challenging and selecting jurors  
21 in civil cases. Jury selection in cases triable by a jury as set forth  
22 in this article shall be conducted in such manner as shall be provided  
23 by the rules of the chief administrator of the courts.

24 § 3. Subdivision 2 of section 212 of the judiciary law is amended by  
25 adding a new paragraph (q) to read as follows:

26 (q) (i) The chief administrator of the courts shall designate one or  
27 more supervising judges for voir dire for each judicial district. Such a  
28 supervising judge shall have authority, in accordance with this para-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 graph, to review and to vacate or modify an order or determination by a  
2 justice, judge or judicial hearing officer in relation to the conduct of  
3 jury selection in a civil action originating in the supreme court or  
4 county court where such order or determination constitutes a failure to  
5 comply with the provisions of section forty-one hundred seven-a of the  
6 civil practice law and rules or the rules promulgated thereunder after  
7 the provisions of such section or such rules were brought to the atten-  
8 tion of such judge or judicial hearing officer; provided, however, that  
9 nothing in this paragraph shall affect the rights of any party on  
10 appeal.

11 (ii) Any party aggrieved by an order or determination by the trial  
12 court pertaining to the conduct of jury selection may request an immedi-  
13 ate review under this paragraph. A supervising judge for voir dire shall  
14 consider such request for review in such manner, including telephone  
15 conference, as he or she may determine, except that such review shall  
16 not be conducted ex parte. A record, including a recording of any tele-  
17 phone conference, of such review shall be made at the request of any  
18 party. Any order under this paragraph shall be reduced to writing.

19 (iii) No judicial proceeding shall be delayed or continued to allow  
20 for review hereunder by a supervising judge for voir dire, provided,  
21 however, that if the request for review pertains to an order or determi-  
22 nation as to the questioning of an individual juror, the voir dire shall  
23 be suspended and the supervising judge for voir dire shall rule on the  
24 order or determination before further questioning resumes as to that  
25 particular juror.

26 (iv) This paragraph shall authorize review by a supervising judge for  
27 voir dire only of a trial court order or determination relating to jury  
28 selection as set forth in this paragraph and shall not authorize such  
29 review of any other orders, determinations or decisions of the trial  
30 court.

31 (v) A special proceeding in the appropriate appellate division shall  
32 lie pursuant to article seventy-eight of the civil practice law and  
33 rules to challenge a deliberate failure to apply a method of selection  
34 authorized pursuant to section forty-one hundred seven-a of the civil  
35 practice law and rules only where the supervising judge for voir dire  
36 fails to remedy such deliberate failure after review pursuant to this  
37 paragraph.

38 § 4. This act shall take effect on the first of January next succeed-  
39 ing the date upon which it shall have become a law and apply to all  
40 actions filed on or after such effective date and to actions pending on  
41 such effective date provided no note of issue has yet been filed there-  
42 in.

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A11715

**SPONSOR:** Rules (Weinstein)

**TITLE OF BILL:**

An act to amend the civil practice law and rules and the judiciary law,

in relation to jury selection

**PURPOSE OF BILL:**

To clarify that the manner of juror selection in civil cases in the Supreme and County Courts shall be conducted in the manner provided by the rules of the Chief Administrator of the Courts; to require the Chief Administrator to designate one or more Supervising Judges for Voir Dire for each Judicial District with authority to immediately review orders or determinations in relation to the conduct of jury selection in an action originating in the Supreme court or County court; and to provide a limited right of further review to redress deliberate failure to apply a jury selection method promulgated pursuant to this act.

**SUMMARY OF PROVISIONS OF BILL:**

Section 1 would add amend section 4106 of the Civil Practice Law and Rules (CPLR) to authorize rather than require discharge of alternate jurors after final submission of the case.

Section 2 would add a new CPLR section 4107-a to clarify that the Rules of the Chief Administrator shall govern the procedures for the conduct of voir dire in civil actions in the Supreme and County Courts.

Section 3 would add a new paragraph (q) to section 212(2) of the Judiciary Law as follows:

1) The Chief Administrator shall designate one or more Supervising Judges for Voir Dire in each Judicial District statewide. Such Supervising Judges shall have the initial authority to review orders or determinations by justices, judges and judicial hearing officer in relation to the conduct of jury selection in civil actions originating in Supreme or County Court.

2) Any party aggrieved by an order or determination by the trial court in relation to voir dire may request immediate review by a Supervising Judge for the Judicial District in which such action arises. Such a Supervising Judge may vacate or modify an order or determination in relation to the conduct of jury selection pursuant to CPLR Article 41 and rules promulgated thereunder by the Chief Administrator. The Supervising Judge shall conduct such review in such form as he or she may determine, including telephone conference, except that there shall not be any ex parte consideration. A record, including a recording of the telephone conference, of such review shall be made at the request of any party. Any resulting order of the Supervising Judge shall be reduced to writing.

3) No judicial proceeding shall be delayed or continued except suspension of voir dire as minimally necessary to allow review of an order or determination in relation to questioning of an

individual juror, in which event questioning of such juror shall not continue until the Supervising Judge shall review such order or determination.

4) There shall be no further judicial review of the trial court order or determination during the pendency of the voir dire proceeding before the trial court. This measure would not authorize the Supervising Judge to review any other trial court order or determination.

5) A special proceeding in the appropriate Appellate Division shall lie pursuant to CPLR article 78 to challenge a deliberate failure to apply a method of selection authorized pursuant to CPLR section 4107 -a, as added by this act, only where the Supervising Judge for voir dire fails, after review pursuant to this paragraph, to remedy such deliberate failure.

**EXISTING LAW:**

CPLR Article 41 prescribes that a jury in a civil cause of action in Supreme or County Court be comprised of six persons who are approved as indifferent to the parties and not discharged or excused. The Uniform Rules for Trial Court, as promulgated by the Chief Administrator, governs the conduct and method of voir dire, that is, the questioning, challenging and selection of jurors in civil cases. Currently, there exists no procedure for an aggrieved party to get immediate review of an order or determination in relation to the conduct of jury selection in a civil action.

**JUSTIFICATION:**

This bill would clarify that voir dire procedures statewide in civil causes of action in the Supreme or County Courts shall be conducted as set forth in CPLR Article 41 and as set forth in the rules promulgated thereunder by the Chief Administrator. The failure by the trial judge or judicial hearing officer to adhere to the framework established by the statute or the rules would give rise to a new right of review by the newly appointed Supervising Judge for Voir Dire for the Judicial District in which the action arises. To promote compliance with such rules, where the trial court and Supervising Judge both deliberately refuse to apply a method of jury selection authorized under such rules, such willful refusal could be challenged by special proceeding in the appropriate Appellate Division.

**LEGISLATIVE HISTORY:**

None; new measure.

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:**

None.

**EFFECTIVE DATE:**

January 1st next succeeding the date upon which it shall have become law and apply to all actions filed on or after such effective date and to actions pending on such effective date provided no note of issue has yet been filed therein.

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