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Could Proposed Changes to Civil Jury Selection Rules Slow Down Pa.'s Courts?

"Tip staff are well-trained and experienced enough to be able to conduct voir dire so if it is not broken, why fix it?" medical malpractice attorney Heidi Villari said in an email.

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If it ain't broke, don't fix it.

That's the reaction from some trial attorneys to a proposal from a state court rules committee that seeks to bring changes to the civil jury selection process.

Recently, the Pennsylvania Civil Rules Committee issued proposed rule changes that would require judges, rather than staff, to oversee jury selection unless both parties can agree that the judge does not need to be present.

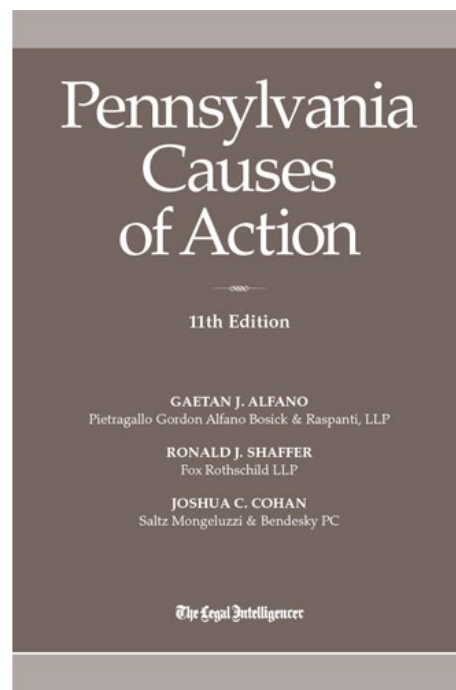
The [proposal](#) would mark a significant change for the state's most active venues, such as Philadelphia and Allegheny counties, which have for years allowed staff to oversee voir dire as a way of freeing up judges to continue handling other matters, such as motions or arbitration appeals.

The proposed rule change would also mandate that voir dire proceedings be formally recorded by a court reporter. That way, although parties would not automatically need to purchase the transcripts, the official recordings would be available if any problems arose throughout the life of the case.

However, while many attorneys were generally supportive of the rule, they acknowledge it may bring about significant changes. And still others said the process in place works well as it is.

“Tip staff are well-trained and experienced enough to be able to conduct voir dire so if it is not broken, why fix it? It is typically obvious when a prospective juror can not be fair and impartial during the jury selection process,” medical malpractice attorney Heidi Villari said in an email. “Judges are available to hear the motions to strike for cause, and have the ability to question the prospective juror if she/he requires an impression to make the decision. Provided the trial attorneys conduct themselves in a professional manner when questioning the prospective jurors, and that is something a court expects, I personally see no reason why tip staff cannot substitute for the judge during the process.”

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The committee's explanatory note included in the proposal said the proposed changes arose out of a state [Supreme Court case](#) that dealt with questions about whether appellate courts could defer to trial judges' decisions about striking jurors if those judges were not present when the potential jurors were initially questioned.

The case, [Trigg v. Children's Hospital of Pittsburgh of UPMC](#), arose out of Allegheny County after potential jurors met with a court clerk assigned by the calendar control judge. After an issue arose before the clerk, the calendar judge returned and then ruled on the challenge by reading the transcript. Ultimately, the Supreme Court determined that the parties had waived the initial challenge, but Justices Christine Donohue and David Wecht wrote concurring opinions calling on the Civil Rules Committee to address the issue.

The explanation acknowledges that the current system allowing for staff to oversee voir dire enhances "efficiency and efficacy of judicial resources," and that changes "may impact judicial operations and create logistical burdens to overcome."

Some attorneys said the changes may bring about slowdowns, but by still allowing staff to oversee voir dire if the parties agree, the proposal strikes the right balance given the Supreme Court's emphasis on the importance of voir dire in the trial process.

"If it slows things down, is that an argument not to do it?" Kenneth Butensky, president of the Philadelphia Association of Defense Counsel,

said. “Yes, it might slow things down, but, oh well, that’s the cost for a more just system in the eyes of many.”

Echoing a common sentiment, Butensky said that staff does an excellent job of overseeing cases, but given the Supreme Court’s concerns, the proposal would be beneficial.

One suggestion raised by members of his group, he said, was that it might be useful to keep anonymous the inquiry into which party wants a judge to oversee the proceedings so the holdouts are not known to the court.

Marshall Dennehey Warner Coleman & Goggin appellate chair John Hare said the proposal balances the competing concerns of the judiciary and the need to closely monitor voir dire. He said he is hopeful any changes will not slow down the courts.

“Where appropriate, lawyers will agree to waive the requirements if they’re in a jurisdiction that’s especially busy, unless there’s something unusual about the case that really mandates the involvement of a judge at every stage of voir dire,” Hare said.

According to some attorneys, having a judge, rather than tipstaff, oversee voir dire also means attorneys typically play less of a role during the proceedings. Typically, when a judge handles voir dire, the judge leads the questioning of the jurors. However, when staff oversees the proceedings, the attorneys are the ones who get to lead the questioning.

Lawyers who spoke with The Legal said that, regardless of which side of the “v.” they represent, this is often a great opportunity to connect and assess the people who will be deciding their case, and so they could lose out on that opportunity with a judge overseeing the process.

“Above all, as a trial lawyer, it really is a privilege to be able to question a prospective juror. It would always be my preference to allow the lawyers to ask questions to the prospective juror during voir dire,” Villari said.

Regarding the recording of the proceedings, one attorney suggested the proposal could inadvertently pressure judges to seek to oversee the proceedings themselves, and others said it could impact how forthcoming some jurors will be during questioning.

Andrew Duffy of Saltz Mongeluzzi Bendesky agreed that the proposed rule strikes a good balance, and said, even with a judge overseeing jury selection, attorneys would still be highly involved in the proceedings. He said the current method has been extremely effective, but both sides should be able to work together to ensure things continue to move smoothly through the courts.

“We as plaintiffs attorneys are going to have to work closely with the defense bar and the bench to figure out the most efficient and logical way to move forward without putting an extreme burden on judicial resources,” he said. “For decades the defense bar and the plaintiffs bar have worked closely together to make the process more efficient and better for everybody, and hopefully this would be another occasion.”

The committee will be accepting comments to the rule proposal through Nov. 10.