



October 28, 2021

Via E-mail

Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Comments on Jury Selection Process (Pre-Judicial Conference)  
Hughes Justice Complex  
P.O. Box 037  
Trenton, New Jersey 08625-0037

Dear Judge Grant:

The New Jersey Civil Justice Institute (“NJCJI”) is a nonpartisan coalition of the state’s largest employers, leading trade associations and small businesses. NJCJI’s mission is to promote a fair and predictable civil justice system in New Jersey, which is an essential ingredient for a functioning economy. This correspondence serves to provide NJCJI’s response to the Court’s request for preliminary comments on the issues to be addressed at the upcoming Judicial Conference on Jury Selection.

Overall, NJCJI supports the contemplated changes to the jury selection process in New Jersey. The educational and training measures the Judiciary has identified as potential solutions will improve New Jerseyans’ experience as jurors and enhance their understanding of the vital role of jury service in our justice system. In turn, these outcomes will promote public participation and confidence in the courts.

NJCJI also supports efforts to eliminate intentional discrimination and unconscious bias against underrepresented groups from the jury selection process. NJCJI respectfully requests, however, that the Judiciary reject calls for outright elimination of peremptory challenges from that process in civil cases. The power that peremptory challenges repose in *litigants* should not be disregarded.

In the civil context, peremptory challenges provide litigants —plaintiffs and defendants — with influence over the jury selection process. There is an important human element of jury selection that matters to all litigants. Only people in the courtroom can develop a “feel” for jurors’ reactions to the *voir dire* and selection process. The cold pages of a transcript may provide no sense of whether a juror appeared irritated or offended by the *voir dire* questions or disinterested in the overall process. The record may not reflect that a potential juror dozed off or rolled their eyes. A juror’s tone of voice may be lost in transcription. These considerations are valid for any litigant sitting in a courtroom whose fate is wrapped up in a civil trial, yet they sometimes defy precise explication.

Of course, this can create holes through which byproducts of human imperfection can seep into the jury selection process. Nevertheless, without any peremptory challenges, people who may appear unwilling to meaningfully participate as jurors could still serve on a jury and be a toxic and disturbing presence for litigants and other jurors. Peremptory challenges provide civil litigants a degree of control over such “unknown unknowns” at trial. Supplanting litigants’ influence over the process with a totally random selection process or one entirely administered by judges (who have their own unconscious biases) may not lead to just outcomes from the litigants’ perspective.

New Jersey’s current number of peremptory challenges in civil cases, six (6)<sup>1</sup>, is in line with most other states. Most states allow a handful of peremptory challenges in civil cases with room to make the available challenges equal when there are multiple parties on one side of the case. Only one state, Arizona, has eliminated peremptory challenges in both criminal and civil cases, and has only done so earlier this year. This policy change in Arizona will not go into effect until January 1, 2022, so the practical consequences of this decision are unknown. Otherwise, the standard number of peremptory challenges allowed in other states tends to be around three to six challenges. New Jersey is certainly not an outlier in the civil context.

In sum, NJCJI supports the proposed measures and the intent of the Judicial Conference on Jury Selection. NJCJI deeply appreciates the Judiciary’s leadership and its commitment to equality and justice. NJCJI only raises the above comment in the spirit of caution since peremptory challenges are a longstanding component of the jury selection process that provides litigants with an important power over the process.

If Your Honor has any questions about this comment or would like to discuss this matter, then please do not hesitate to contact me directly.

Respectfully submitted,



---

Anthony M. Anastasio  
President  
New Jersey Civil Justice Institute

---

<sup>1</sup> Under Rule 1:8-3(c), each party in a civil action in New Jersey is usually entitled to six (6) peremptory challenges. Parties represented by the same attorney are considered one (1) party for purposes of this rule. Where there are multiple parties on one side, trial judges may, in their discretion and on application of counsel prior to jury selection, accord the adverse party additional peremptory challenges as appropriate to avoid unfairness to the adverse party.