JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
John A. Larson, Senior Court Services Analyst, 415-865-7589

DATE: March 22, 2006

SUBJECT: Juror Questionnaire for Criminal Cases—Capital Case Supplement (revise form MC-002)(Action Required)

Issue Statement

The Judicial Council approved form MC-002, *Jury Questionnaire for Criminal Cases*, effective January 1, 2006. That form is an optional, general questionnaire to be used by the court and counsel to assist the court in making criminal case voir dire more efficient––counsel can avoid repetition during direct questioning and can use the form as a basis to build individual questionnaires tailored to particular cases. The form also provides individual jurors the opportunity to flag for the court potentially sensitive and private matters. There is currently no specific set of questions contained in form MC-002 that addresses issues of particular relevance to capital cases.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2006, revise form MC-002 to incorporate the *Capital Case Supplement* into the model questionnaire. The text of the proposed revision only is attached.

Rationale for Recommendation

The Task Force on Jury System Improvements, in its 2003 Final Report, delegated the development of the statewide criminal case questionnaire's content (based on form MC-001, *Juror Questionnaire for Civil Cases*) to future action by staff of the Administrative Office of the Courts and the pertinent Judicial Council advisory committee. The Criminal Law Advisory Committee subsequently developed the content for Judicial Council form MC-002, *Juror Questionnaire for Criminal Cases*, which was approved by the council, effective January 1, 2006.

While developing the content for the basic criminal questionnaire, the committee also worked to develop the content for a basic supplemental questionnaire for capital cases.

When the committee in March 2005 approved recommending to the Rules and Projects Committee (RUPRO) that form MC-002 circulate for public comment, the committee retained the supplemental capital case questionnaire for further review and development, given the sensitive nature of the subject matter of the form.

The proposed *Capital Case Supplement* revision of form MC-002 is an optional supplemental form designed to be used in concert with the existing basic criminal questionnaire contained in form MC-002. The supplemental questionnaire can assist both court and counsel in the examination of jurors concerning the sentences of life without the possibility of parole and death. The form can also be used as a basis to tailor individual questionnaires to particular cases.

Alternative Actions Considered

The committee considered and rejected the alternative of not developing a supplemental capital case questionnaire, especially given that the form is for optional use, because of the need for guidance concerning voir dire in capital cases.

Comments From Interested Parties

The supplemental capital case questionnaire was circulated as new form MC-002(a) for public comment from December 19, 2005, to January 23, 2006. The form is now being proposed as a revision of form MC-002 rather than a separate form, to provide symmetry in structure with form MC-001, *Juror Questionnaire for Civil Cases,* which contains a *Personal Injury Supplement* as part of the overall form.

Nine comments were submitted concerning the proposal. Six agreed with the proposal, two agreed only if modified, and one did not agree with the proposed form. The majority of the recommended modifications to the form related to clearer phrasing of certain questions and consolidation of questions on the same subject for greater economy. The committee agreed with most of the proposed changes.

The committee did not agree with the following two recommendations made on behalf of the Superior Court of Ventura County.

- A recommendation to delete the definitions of mitigating and aggravating circumstances from paragraphs five and six of the introductory page D-1 of the supplemental questionnaire—the committee decided that the definitions (drawn from *Judicial Council of California Criminal Jury Instructions (CALCRIM)* number 763) provided necessary context for jurors to respond to questions concerning the sentences of death and life without the possibility of parole. In addition, to align more fully and accurately with the published instruction, the sixth paragraph was merged with the third paragraph of page D-1 and the instruction was fully cited to clarify it as the source of the definitions.

- A recommendation to delete question 2.1, inquiring about jurors' viewpoints on the severity of the death penalty and life without parole, because the question does not aid in the exercise of a challenge for cause—the committee decided that the question would lead to uncovering possible bias with regard to the death penalty and life without parole, especially when asked in combination with the related follow-up questions in the questionnaire.

The Superior Court of Los Angeles County also recommended changes to the introductory page to improve readability. The committee agreed with the proposed changes, with the additional clarification that the questions contained in the supplemental capital case questionnaire are being asked if the "defendant is found guilty of murder <u>in the first degree</u> . . ." in addition to special circumstances. The original proposed change had only referred to "murder charges" without the designation of degree.

For more detailed information concerning comments on the proposed form, see the comment chart attached at page 10.

The Rules and Projects Committee reviewed the proposal on March 16, 2006. The committee requested that staff return to the advisory committee to draft an advisory note for the introductory page, D-1. The committee directed that the note should advise users of the form that if *California Jury Instructions, Criminal (CALJIC)* were to be used during the trial instead of *CALCRIM*, then the introductory text should advise judges to use the corresponding *CALJIC* instruction regarding mitigating and aggravating circumstances instead of the *CALCRIM* number 763 language included in the introductory page.

The former chair of the Task Force on Criminal Jury Instructions was consulted on the drafting of the advisory committee note and indicated that, while generally discouraged, there are instances where mixing the *CALJIC* and *CALCRIM* instructions may be acceptable. The former chair recommended using a version of the general admonition against mixing *CALJIC* and *CALCRIM* instructions that is found in the published and online versions of *CALCRIM*, rather than directing judges to use a particular *CALJIC* instruction instead of *CALCRIM*. In addition, to aid judges in the exercise of their discretion over the content of jury instructions, it was recommended that a reference to the jury instructions user forum on the Serranus Web site be including in the note.

The advisory note was presented to the chair of the Criminal Law Advisory Committee, who approved the language on behalf of the full committee. The note is included in the attached form on page D-1a.

<u>Implementation Requirements and Costs</u>
Because use of proposed form MC-002 is optional, the implementation costs of preparing, copying, and administering the questionnaire during voir dire in capital cases

is entirely dependent on the discretion of the parties and the court. It is not anticipated that costs would increase above current levels associated with the use of juror questionnaires in capital case voir dire.

Attachments

Juror ID number _____

Case number _____

JUROR QUESTIONNAIRE FOR CRIMINAL CASES

Capital Case Supplement

By asking the following questions regarding your feelings or opinions about capital punishment, the court is not suggesting in any way that you will ever need to decide this question. The court does not know in advance what the evidence in this case will be or whether you will find a defendant guilty or not guilty of any charge at all. The court is asking the following questions because *if* a defendant is found guilty of murder in the first degree as well as what we call "special circumstances" that have been charged, the possible sentences to be decided in a separate penalty trial are the sentence of death or the sentence of life imprisonment without the possibility of parole. A defendant may also be acquitted or found guilty of lesser charges, which means there never will be a penalty trial. Since we do not know in advance what your decisions may be, the court must know whether you could be fair to all sides on the issue of punishment if and only if a penalty trial is necessary.

To clarify, you will only make a sentence decision between life without the possibility of parole and death in a separate penalty trial if you find a defendant guilty of murder in the first degree beyond a reasonable doubt and you find a "special circumstance" (to be defined for you later) true.

If the penalty trial is necessary you will first hear evidence and arguments from counsel. The law also provides very specific guidelines as to what a jury can consider in deciding the sentence in this separate penalty trial. These guidelines are called "aggravating factors" and "mitigating factors" and are explained in *Judicial Council of California Criminal Jury Instructions* number 763:*

> In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence.
>
> An aggravating circumstance or factor is any fact, condition, or event relating to the commission of a crime, above and beyond the elements of the crime itself, that increases the wrongfulness of the defendant's conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty.
>
> A mitigating circumstance or factor is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant's blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty.

* Note to users: *California Jury Instructions, Criminal (CALJIC)* and *Judicial Council of California Criminal Jury Instructions (CALCRIM)* are not intended to be used together. While the legal principles are obviously the same, the organization of concepts is approached differently. Trying to mix the two sets of instructions into a unified whole may result in omissions or confusion that could compromise clarity and accuracy. For more information concerning the use of *CALCRIM* and *CALJIC* together, check the *CALCRIM* user forum at the following address: *http://serranus.courtinfo.ca.gov/reference/crim_jury_instructions/forum.htm*.

Juror ID number _____

Case number _____

2.1 WHICH DO YOU THINK IS THE MORE SEVERE PUNISHMENT?

☐ THE DEATH PENALTY OR ☐ LIFE IN PRISON WITHOUT PAROLE

WHY?

_____

_____

_____

_____

2.2 WHICH WOULD YOU SAY ACCURATELY STATES YOUR GENERAL BELIEF REGARDING THE DEATH PENALTY?

☐ STRONGLY IN FAVOR ☐ STRONGLY OPPOSED

☐ MODERATELY IN FAVOR ☐ MODERATELY OPPOSED

☐ NEUTRAL

PLEASE EXPLAIN IN MORE DETAIL YOUR BELIEFS ABOUT THE SENTENCE OF DEATH:

_____

_____

_____

_____

2.3 WHICH WOULD YOU SAY ACCURATELY STATES YOUR GENERAL BELIEF REGARDING LIFE WITHOUT THE POSSIBILITY OF PAROLE?

☐ STRONGLY IN FAVOR ☐ STRONGLY OPPOSED

☐ MODERATELY IN FAVOR ☐ MODERATELY OPPOSED

☐ NEUTRAL

PLEASE EXPLAIN IN MORE DETAIL YOUR BELIEFS ABOUT THE SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE:

_____

_____

_____

_____

2.4 WHAT PURPOSES, IF ANY, DO YOU BELIEVE THAT LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE SERVES?

_____

_____

_____

_____

2.5 WHAT PURPOSES, IF ANY, DO YOU BELIEVE THE DEATH PENALTY SERVES?

_____
_____
_____
_____

2.6 DO YOU BELIEVE THE DEATH PENALTY IS IMPOSED:

☐ TOO OFTEN ☐ ENOUGH
☐ NOT ENOUGH ☐ RANDOMLY
☐ DO NOT KNOW

2.7 HAVE YOUR VIEWS ABOUT THE DEATH PENALTY CHANGED SUBSTANTIALLY IN EITHER INTENSITY OR NATURE IN THE LAST FEW YEARS?

☐ YES ☐ NO

IF YES, HOW HAVE YOUR VIEWS ABOUT THE DEATH PENALTY CHANGED?

_____
_____
_____
_____

2.8 CAN YOU SET ASIDE ANY OPINIONS YOU MAY HAVE ABOUT THE DEATH PENALTY, AND MAKE A DECISION IN THIS CASE BASED ON THE EVIDENCE AND THE LAW AS IT IS GIVEN BY THE JUDGE?

☐ YES ☐ NO

IF NO, WHY NOT?

_____
_____
_____
_____

2.9 DO YOU HAVE ANY RELIGIOUS OR PERSONAL BELIEFS THAT MAY INFLUENCE YOU IN YOUR DETERMINATION OF WHETHER TO VOTE TO IMPOSE EITHER THE PENALTY OF DEATH OR LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

☐ YES ☐ NO

IF YES, PLEASE EXPLAIN:

_____
_____
_____
_____

Juror ID number _____

Case number _____

2.10 ARE YOU A MEMBER OF, OR HAVE YOU CONTRIBUTED TO OR OTHERWISE SUPPORTED A CHURCH, RELIGIOUS ORGANIZATION, POLITICAL OR SOCIAL ADVOCACY GROUP, OR ANY OTHER ORGANIZATION THAT TAKES A POSITION FOR OR AGAINST THE IMPOSITION OF THE PENALTY OF DEATH?

☐ YES ☐ NO

a. IF YES, WHAT GROUP(S)?

_____

_____

_____

_____

b. WHAT IS THE GROUP'S POSITION?

_____

_____

_____

_____

c. DO YOU FEEL OBLIGATED TO ACCEPT THIS POSITION?

☐ YES ☐ NO

IF YES, PLEASE EXPLAIN WHY:

_____

_____

_____

_____

2.11 EVEN IF YOU BELIEVED THE PROSECUTOR HAD PROVED GUILT BEYOND A REASONABLE DOUBT, WOULD YOU, BECAUSE OF ANY VIEWS YOU MAY HAVE REGARDING THE DEATH PENALTY, REFUSE TO FIND THE DEFENDANT(S) GUILTY OR FIND A SPECIAL CIRCUMSTANCE TO BE TRUE IN ORDER TO AVOID HAVING TO DECIDE WHETHER TO IMPOSE THE DEATH PENALTY?

☐ YES ☐ NO

2.12 IF YOU FIND THE DEFENDANT(S) GUILTY OF THE CRIME, WOULD YOU AUTOMATICALLY IN ALL CASES VOTE FOR A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE REGARDLESS OF THE EVIDENCE CONCERNING AGGRAVATING AND MITIGATING FACTORS?

☐ YES ☐ NO

2.13 IF YOU FIND THE DEFENDANT(S) GUILTY OF THE CRIME, WOULD YOU AUTOMATICALLY IN ALL CASES VOTE FOR A SENTENCE OF DEATH REGARDLESS OF THE EVIDENCE CONCERNING AGGRAVATING AND MITIGATING FACTORS?

☐ YES ☐ NO

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. James P. Cloninger Judge Superior Court of Ventura County Ventura	AM	Y	We recommend deleting from the introductory page to the questionnaire paragraphs five and six which purport to define what mitigating and aggravating circumstances are. There is no need for the court to define these terms in the questionnaire. 2.1: We do not agree with this proposed question. The question will not aid in the exercise of a challenge for cause, as required by Code Civ. Proc. section 223. 2.2: We agree with this proposed question. As noted below, we think a similar question should be posed concerning the sentence of life without parole. 2.3: We agree with this proposed question, but would like to see it incorporated into question 2.2 so that it is clear to the prospective juror that it ties into that prior question. 2.4: We do not agree with this proposed question unless it is paired with a question	Disagree; definitions drawn from *CALCRIM* instruction and provide needed context for jurors to respond to questions designed to indicate bias related to the death penalty and life without parole. 2.1: Disagree; question does help reveal actual or implied bias, especially when asked in combination with follow-up questions further refining viewpoints on the death penalty and life without parole. 2.2: See response to 2.4. 2.3: Agree; remove numbering as a separate question and make it a continuation of question 2.2. 2.4: Agree; insert a new question 2.3 concerning life without

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Hon. James P. Cloninger Judge Superior Court of Ventura County Ventura (cont.)			concerning the sentence of life without parole which mirrors the question in 2.2.	parole that mirrors revised question 2.2, remove numbering as a separate question and make it a continuation of new question 2.3.
				2.5, 2.6, 2.7, 2.8: We do not agree with [these] proposed question[s]. The question[s] will not aid in the exercise of a challenge for cause, as required by CCP section 223.	Disagree; in context with revised questions 2.2 and 2.3 these questions will serve to help disclose actual or implied bias.
				2.9: We agree with this proposed question	2.9: No response necessary.
				2.10: We agree with the focus of this proposed question, but suggest that its wording be changed to ask the prospective juror the question in a more open and neutral way. For example, the question might be phrased: "Do you have any religious or personal beliefs that may influence you in your determination of whether to vote to impose either the penalty of death or life in prison without parole?"	2.10: Agree with proposed change.
				2.11, 2.12, 2.13: We do not agree with proposed question 2.11. We suggest that this question, along with those in 2.12 and 2.13, be simplified and incorporated into a	2.11, 2.12, 2.13: Agree; consolidate questions. Add subpart to elicit group names and retain existing subparts

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Hon. James P. Cloninger Judge Superior Court of Ventura County Ventura (cont.)			single question which is general in nature and does not single out religious institutions separately from social activist groups. We think the question might be phrased: "Are you a member of, or have you contributed to, a church, religious organization, political or social advocacy group, or any other organization which takes a position for or against the imposition of the penalty of death?" 2.14, 2.15, 2.16: We agree with these questions.	concerning views and whether juror agrees with them. 2.14. 2.15. 2.16: No response necessary.
2.	Ms. Sabra Forbes Program Manager Superior Court of Solano County Fairfield	A	N		
3.	Mr. David Jetton Court Administrator Superior Court of Los Angeles County Los Angeles	A	N		
4.	Superior Court of Los Angeles County Los Angeles	AM	Y	Changes recommended for the introductory page include: 1. explanation of "special circumstances;" 2. clarification that there is a separate penalty trial to determine sentencing; and 3. explanatory transition before definitions of aggravating and mitigating factors. See	1. Agree; increases clarity for juror 2. Agree; increases clarity for juror 3. Agree; increases clarity for

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Superior Court of Los Angeles County Los Angeles (cont.)			attachment for full text of proposed changes to introductory page.	juror
				2.9: Change to "Can you set aside any opinions you may have about the death penalty and make a decision in this case based on the evidence and the law as it is given by the judge?"	2.9: Agree; question recognizes that evidence, in addition to law given by the judge, is considered during the penalty trial.
				2.11.: Add "c. Do you agree with the view of your particular religious organization?"	2.11: Disagree; proposed question is addressed in revised, renumbered question 2.9.
				2.12: Change to "Do you belong to, ~~or~~ have you donated to, or supported any group that advocates the abolition of the death penalty?"	2.12: Agree; include in new question 2.10 nonfinancial support to group activities.
				2.13: Change to "Do you belong to, ~~or~~ have you donated to, or supported any group that advocates the increased use of the death penalty?"	2.13: Disagree; question replaced by new question 2.10.
				2.14: Change to: "Even if you believed the prosecutor had proved guilt beyond a reasonable doubt, would you, because of any view you may have regarding the death penalty, refuse to find the defendant guilty or find a special circumstance to be true in	2.14: Agree; improves readability.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Superior Court of Los Angeles County Los Angeles (cont.)			order to avoid having to decide whether to impose the death penalty?” 2.15: Change to: “If you find the defendant guilty of the crime, would you automatically in all cases vote for a sentence of life without the possibility of parole ~~without considering~~ regardless of the evidence ~~and the~~ regarding aggravating or mitigating factors?” 2.16: Change to: “If you find the defendant guilty of the crime, would you automatically in all cases vote for a sentence of death ~~without considering~~ regardless of the evidence ~~and the~~ regarding aggravating or mitigating factors?”	2.15: Agree; question presupposes that the jury has evaluated evidence during trial to find guilt beyond a reasonable doubt. Revision clarifies that evidence in penalty trial is limited to aggravating and mitigating factors. 2.16: Agree; same as above.
5.	Ms. Joan McCoy Volunteer, Court Appointed Special Advocate CASA of Fresno and Madera Counties Fresno	N	N		
6.	Ms. Sharon Ngim Staff Liaison, State Bar of California’s Standing Committee on the Delivery of Legal Services San Francisco	A	Y		

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

W06-07
Juror Questionnaire for Criminal Cases—Capital Case Supplement (revise form MC-002)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
7.	Hon. Kathleen R. O'Connor Judge Superior Court of Yuba County Marysville	A	N		
8.	Mr. Mike Roddy Executive Officer Superior Court of San Diego County San Diego	A	Y		
9.	Mr. Joe Yniquez Deputy Jury Commissioner Stanislaus County Superior Court Modesto	A	N		

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.