

Invitation to Comment

Title	Criminal Cases: New Advisory Committee Comment to rule regarding jury voir dire (amend Cal. Rules of Court, rule 4.201).
Summary	The procedure regarding when to allow and when to inform prospective jurors of the possibility of sequestered voir dire is not well-known. This proposal would add an advisory committee comment clarifying when sequestered voir dire is appropriate and when courts might wish to inform prospective jurors of the possibility.
Source	Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair
Staff	Joshua Weinstein, Senior Attorney, 415-865-7688, joshua.weinstein@jud.ca.gov
Discussion	<p>The Code of Civil Procedure creates a preference for nonsequestered voir dire. (Code of Civ. Proc., § 223.) Judges, however, have the discretion to allow sequestered voir dire on issues that may be sensitive to the prospective juror or when the court deems it otherwise appropriate. (<i>People v. Roldan</i> (2005) 35 Cal.4th 646, 691.) The Criminal Law Advisory Committee, in response to concerns raised by jurors, is endeavoring to make the procedure of when to allow or inform prospective jurors of the possibility of sequestered voir dire better known. In addition to increased judicial education, the committee is suggesting this advisory committee comment to describe the procedure in a straight forward manner. We invite your comments on the proposed advisory committee comment, as well as on other recommended approaches for informing judges of these procedures.</p> <p>The proposed advisory committee comment states the law regarding the preference for nonsequestered voir dire; points out the situations where sequestered voir dire might be appropriate, suggesting that it “may be appropriate to inform the jury of the possibility of sequestered voir dire;” and notes that prospective jurors must be advised of their right to request a hearing in chambers on sensitive questions rather than answering them on a written questionnaire.</p> <p>The text of the amended rules is attached at page 2.</p>
	Attachment

Rule 4.201 of the California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 4.201. Voir dire in criminal cases**

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3 To select a fair and impartial jury, the judge must conduct an initial examination
4 of the prospective jurors orally, or by written questionnaire, or by both methods.
5 The Juror Questionnaire for Criminal Cases (form MC-002) may be used. After
6 completion of the initial examination, the court must permit counsel to conduct
7 supplemental questioning as provided in Code of Civil Procedure section 223.

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9 **Advisory Committee Comment**

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11 Although Code of Civil Procedure section 223 creates a preference for nonsequestered voir dire, a
12 judge may conduct sequestered voir dire on issues that are sensitive to prospective jurors, on
13 questions concerning media reports of the case, and on any other issue deemed advisable. (*People*
14 *v. Roldan* (2005) 35 Cal.4th 646, 691.) To determine whether such issues are present a judge may
15 consider factors including the charges, nature of the evidence that is anticipated to be presented,
16 and any other relevant factors. To that end, it may be appropriate to inform jurors of the
17 possibility of sequestered voir dire if the juror believes his or her answers are sensitive in nature.
18 It should be noted, however, that when written questionnaires are used, jurors must be advised of
19 the right to request a hearing in chambers on sensitive questions rather than answering them on
20 the questionnaire. (*Copley Press Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 87.)

Item SP07-21 Response Form

Title: Criminal Cases: New Advisory Committee Comment to rule regarding jury voir dire (amend Cal. Rules of Court, rule 4.201).

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 27, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.