

March 22, 2017

By email and U.S. mail

Rebecca A. Womeldorf, Secretary  
Advisory Committee on Civil Rules  
Administrative Office of the United States Courts  
Thurgood Marshall Bldg  
One Columbus Circle N.E.  
Washington, D.C. 20544

**RE: Suggested Change to Federal Rule of Civil Procedure 47(a),  
Docket No. 17-CV-C**

To the Members of the Advisory Committee on Civil Rules:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits its support of the American Bar Association's recently proposed revision to Fed. R. Civ. P. 47(a) to require that trial counsel be allowed to directly question prospective jurors during the voir dire process. AAJ has thousands of trial attorney members in the United States, Canada, and abroad and is dedicated to preserving the constitutional right to trial by jury and access to justice when people are injured by the negligence or misconduct of others. A fundamental aspect of that purpose and mission is to ensure the rights of all parties to receive a fair trial before an impartial jury.

We incorporate by reference the letter of January 31, 2017 submitted by Thomas M. Susman to the Advisory Committee on Civil Rules in support of the American Bar Association's suggested change to Rule 47(a) (Docket No. 17-CV-C). Under Rule 47(a) in its present form the court "may" allow counsel to directly question jurors, but it has the discretion to conduct all juror questioning itself, precluding direct questioning by counsel. It is the experience of our members that federal trial courts too often exercise that discretion, denying counsel the opportunity to question jurors and depriving litigants of their right to a fair trial.

While it is generally recognized that civil litigants have the right to an impartial trier of fact, it must also be recognized that "Voir dire examination serves to protect that right by exposing possible biases, both known and unknown, on the part of potential jurors." *See McDonough Power Equipment, Inc. v. Greenwood et al.*, 464 U.S. 548, 554 (1984), citing *Smith v. Phillips*, 455 U.S. 209, 217 (1982). As compared to trial counsel who have conducted the discovery and prepared the case for trial, judges cannot be expected at the outset of trial to be aware of all the significant matters on which jurors should be examined for bias. Unfair jury bias can affect the outcome of a case to the detriment of the parties. Trial counsel should be allowed to ask

questions to determine a potential juror's position on the facts of a case as well as to flush out potential juror bias. *See, e.g.,* David A. Wenner, *Juror Bias, in ch.35 Litigating Tort Cases* (Roxanne Barton Conlin & Gregory S. Cusimano eds., West/AAJ Press 2006) (examples of how attorney-conducted voir dire can lead to the recognition of bias from the plaintiff's perspective). Questions submitted in advance for the court to ask do not afford adequate protection because of the probable need for follow-up questions or because the issue in question may arise after voir dire has already begun.

As proposed in the requested revision, direct questioning by counsel would be conducted under the supervision of the court and subject to reasonable time limits. Therefore, concerns about excessive delay or potential abuse of the voir dire process by counsel can be addressed by the court. It is in the best interests of our civil justice system to ensure litigants not be deprived of their rights to fair trials. Requiring attorney-conducted voir dire will allow for meaningful voir dire and we therefore ask that it be considered and adopted by the Advisory Committee.

If you have any questions or require additional information, please contact Anji Jesseramsing, General Counsel, American Association for Justice, at (202) 944-2822.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Braman Kane". The signature is fluid and cursive, with a large initial "J" and "K".

Julie Braman Kane  
President, American Association for Justice

cc: Thomas M. Susman, Director, ABA Governmental Affairs Office