



Legislative Update

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Massachusetts Attorney-Conducted Voir Dire and Monetary Amount Claimed

The Massachusetts General Assembly recently enacted legislation that changes the way cases will be tried in Massachusetts going forward. In August 2014, St. 2014, c. 254, § 2, the Trial Court Bill, was signed into law, altering the relationship between attorneys and self-represented parties and the jurors that will decide their cases. Effective February 2, 2015, the law allows for attorney-conducted jury voir dire in civil and criminal trials. In addition, for the first time, parties will be permitted to suggest specific monetary damages awards to the fact finder.

Attorney-Conducted Voir Dire: Mass. Gen. Laws ch. 234, § 28

Massachusetts General Laws chapter 234, Section 28 permits, upon motion of either party, direct examination of potential jurors by counsel or the parties themselves. The examination is designed to complement the judge's examination of the jurors, which prior to the new law was conducted solely by the court using basic questionnaires and brief follow-up questions. The law sets out the broad topics in which the jurors may be questioned and the purpose behind the individual examinations. Further, the law preserves the discretion of the trial judge to lead and supervise the voir dire process. The law does not, however, provide the procedure for the implementation of the attorney-conducted voir dire.

In an effort to facilitate putting this new law into practice, the Massachusetts Superior Court recently issued Standing Order 1-15: Participation in Juror Voir Dire by Attorneys and Self-Represented Parties, which became effective the same day as the new statute. The standing order provides standard procedures for voir dire while preserving the authority of the superior court judges to employ their own procedures as they see fit.

First, attorney-conducted voir dire may be undertaken only by the filing of a motion. In criminal cases, the motion must be served on opposing parties at least one week before filing, and filed not later than two business days prior to the final pretrial conference or five business days before the trial date. In civil cases, the motion must follow the specific rules for service of motions in the Massachusetts Superior Court and be filed by the earlier of the final pretrial conference or 14 days before the trial date.

The standing order sets forth the general content that should be included in the motion. Parties are to identify any proposed language for the court's preliminary instructions on the applicable principles of law; the general topics of proposed questioning; and at the discretion of the court, the specific language of the proposed questions for preapproval. The order describes the questions presumptively permitted and prohibited, designed to elicit information about a juror's background and experience relevant to the issues in the case and the potential for bias while avoiding duplicative, harassing, and persuasive examination by the attorneys.

The order presents the actual procedure that should be employed by the court, including the judge's pre-voir dire duties, the voir dire process for the judge, the guidelines to be followed by the attorneys and self-represented parties when examining the jurors; allows for panel voir dire; and provides the judge with the discretion to impose reasonable time limits on questioning. The attorneys may question jurors only after the judge has declared prospective jurors indifferent, and are permitted to object to questions raised by the opposing party. The order provides a framework to

implement the new law while the Massachusetts Supreme Judicial Court develops rules and guidelines to employ attorney-conducted voir dire in all Massachusetts courts.

Ad Damnum or Monetary Amount Claimed: Mass. Gen. Laws ch. 231, § 13B

Prior to the amendment of Massachusetts General Laws chapter 231, Section 13B, parties were not permitted to suggest to a jury a specific monetary amount for compensation for intangible losses. Compensatory damage amounts could be presented to a jury, but counsel were left to argue common sense as a method for awarding compensation for intangible damages such as wrongful death, pain and suffering, and loss of companionship. In the same Trial Court Bill signed into law in August 2014, chapter 231, Section 13B was amended to add the following: "In civil actions in the superior court, parties, through their counsel, may suggest a specific monetary amount for damages at trial." Effective November 4, 2014, the amendment allows a plaintiff to suggest a monetary amount as fair compensation for damages while providing a basis for the jury to make an educated evaluation of a plaintiff's damages. Likewise, defense counsel are permitted to suggest an amount they believe is fair and reasonable. ❖

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In Motion

Janice Brown, founder and senior partner of Brown Law Group in San Diego, California, was recently appointed to the California Department of Insurance's Insurance Diversity Task Force for 2015–2016. Founded in 2012, the task force considers and makes recommendations about diversity in the insurance industry, including the diversity of corporate governing boards and procurement from diverse businesses. In addition, Brown was named by the California Minority Counsel Program (CMCP) to its Diversity Leader Hall of Fame in the inaugural year of that initiative of the 25-year-old CMCP. She is a member of TIPS's 2015–2016 Section Meetings Task Force and the Leadership Academy Task Force.

Dan Polsenberg, partner at Lewis Roca Rothgerber LLP in Las Vegas, Nevada, has reached a signal landmark by arguing his 250th appellate case, a feat few attorneys accomplish. In over 30 years of practice, Polsenberg has represented clients in cases ranging from tort to tax and constitutional to commercial law. Among career highlights are his successful argument to allow former Nevada Governor Bob Miller to seek a third term in 1994, securing George Foreman's right to fight for the heavyweight title against Michael Moorer, and representing former University of Nevada Las Vegas coach Jerry Tarkanian in his battle against the National Collegiate Athletic Association. Polsenberg is a member of TIPS's Appellate Advocacy Committee.

Matthew B. Schiff has joined Sugar Felsenthal Grais & Hammer LLP in Chicago, Illinois, as chair of the firm's labor and employment law practice. For more than 32 years, he has represented management in defense of claims of discrimination, retaliation, harassment, workers' compensation, and employment torts. Schiff is a TIPS Fellow, chair of the TIPS History Committee, and a member of the Section's Employment Law and Litigation, International, and Workers' Compensation and Employers' Liability Law Committees. ❖