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NEWS

## Phila. Court System Pushed to Adapt as Justices Greenlight Changes to Pa.'s Civil Jury Selection Rules

The rule upends a longstanding practice in the Philadelphia Court of Common Pleas of conducting civil jury selection under the supervision of court staff rather than the judge. While some in the legal community have questioned the necessity of the requirement, others have applauded the change.

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**By Aleeza Furman**  
Litigation Reporter

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## What You Need to Know

- The Pennsylvania Supreme Court approved a rule requiring that judges be present for jury selection in civil cases.
- The rule upends Philadelphia's longstanding practice of using court staff to oversee voir dire.
- Response from the legal community has been mixed.

Pennsylvania's judges have a new responsibility.

The state Supreme Court on Tuesday approved a rule change mandating that a judge be present for jury selection in civil cases unless the litigants opt out of the requirement.

The rule, which is set to take effect April 1, upends a longstanding practice in the Philadelphia Court of Common Pleas of conducting civil jury selection under the supervision of court staff rather than the judge.

And while some in the legal community have questioned the necessity of the requirement, others have applauded the change.

Marian Grace Braccia, director of Temple University Beasley School of Law's trial advocacy program, said requiring an elected judge to be in the room during jury selection "creates a much more consistent and cohesive culture in the courtroom and cultural and institutional memory for that particular case."

When judges are present during voir dire, Braccia said, they can observe important nonverbal cues that might inform how they rule when a litigant challenges a prospective juror for cause.

"There will never be a suitable analog to that if the trial judge, or a judge making a decision on a motion to strike for cause, isn't there to observe that and to experience that for themselves," Braccia said.

C. Scott Toomey—managing partner of Littleton Joyce Ughetta & Kelly and president of the Philadelphia Association of Defense Counsel—also voiced support for the new rule.

"You get a more consistent approach to challenges for cause. You get a more consistent evaluation of prejudice and whether someone's an appropriate juror," he said.

Under Philadelphia's previous system, Toomey said, the court's tip staff would conduct voir dire and only call in the judge if there were certain disputes. Although the changes have not officially gone into effect yet, Toomey said Philadelphia judges have been increasingly participating in jury selection since the new rule was proposed.

Pennsylvania's Civil Procedural Rules Committee proposed the rule change in 2023 after a case examining Allegheny County's local voir dire procedures spurred several justices to call for a potential statewide rule change.

In *Trigg v. Children's Hospital of Pittsburgh of UPMC*, a litigant challenged an Allegheny County judge's denial of a motion to strike a prospective juror for cause, arguing that the judge had only reviewed a transcript of

the initial questioning and had not observed the prospective juror's demeanor.

The Supreme Court ultimately rejected the challenge on procedural grounds, but Justices Christine Donohue and David Wecht wrote concurring opinions emphasizing the importance of having a judge present during voir dire and asserting that the Civil Procedural Rules Committee should consider the issue.

In reviewing the matter, the rules committee noted that judges in counties with heavy caseloads often work on other matters while a jury is being selected.

“The committee acknowledged that these practices enhance the efficiency and efficacy of judicial resources to timely try cases,” the committee said in its adoption report. “Moreover,” the report added, “the committee was cognizant that changing these practices may impact judicial operations and create logistical burdens to overcome.”

When the change was first proposed, responses were mixed.

According to Andrew Duffy, a partner at Saltz Mongeluzzi Bendesky and president of the Philadelphia Trial Lawyers Association, most litigants did not see a significant need for the change.

“For decades, the Philadelphia judges did a great job of conducting voir dire without being present every second, and their staff was well trained and the judges made sure the staff knew what they were doing,” Duffy said.

Duffy said the change has been an adjustment for Philadelphia's judges, noting that the court has seven vacancies. Still, he and others said they do not foresee the change placing too heavy a burden on the court.

“They have been outstanding in not treating this as a strain,” Duffy said of Philadelphia's civil judges. “They just kind of adjust and make sure they are fulfilling their duties.”

Braccia posited that judges' loads might be lightened by Philadelphia litigators who are accustomed to conducting voir dire the old way. She predicted that many civil trial lawyers might stick to the way they have always done things and waive the mandatory presence of a judge.

“I don’t anticipate that there’s going to be a massive overhaul of how civil juries are selected,” she said.

However, Toomey and Duffy said that, in practice, lawyers have been choosing to have a judge in the room. Both lawyers said that in the time Philadelphia changed its voir dire practices, they had not seen any waivers.

Toomey predicted that, in time, jury selection would become another routine part of overseeing a case for Philadelphia judges, as it already is for judges in many other counties in Pennsylvania.

And considering the extra steps involved when voir dire was conducted by court staff, Toomey said, the new requirement “saves time ultimately, and it's more fair and efficient to everybody.”

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