



Supreme Court of Illinois

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NEW RULE WILL ALLOW JURORS TO SUBMIT QUESTIONS TO WITNESSES IN CIVIL TRIALS

Chief Justice Thomas L. Kilbride and the Illinois Supreme Court announced Tuesday a new rule that will allow jurors in civil cases to pose their own questions to a witness.

The rule has undergone extensive study since it was received by the Supreme Court Rules Committee in August 2010, and was discussed at a public hearing where it received the support of the Chief Judge of the Northern District of Illinois, the Illinois State Bar Association, the Chicago Bar Association and others.

It will go into effect July 1, 2012 as Supreme Court Rule 243.

"This proposal was the subject of much discussion—both internally by the Illinois Supreme Court Rules Committee at several of its meetings and at a public hearing in May 2011," said Chief Justice Kilbride. "Based on the comments of those who have used or seen the procedure at trials, such a rule enhances juror engagement, juror comprehension and attention to the proceeding and gives jurors a better appreciation for our system of justice. The rule is written so that its implementation rests with the discretion of the trial judge and with safeguards so that the testimony it elicits complies with the rules of evidence."

John B. Simon, chair of the Rules Committee, believes the scrutiny given the proposal before its adoption will benefit not only jurors, but lawyers, judges and the entire system of justice.

"After receiving positive written comments and hearing the favorable views of the organized bar, practitioners and judges during the public hearing, I expect that judges and trial lawyers will welcome the adoption of the new rule," Mr. Simon said. "The parameters set forth in the rule are designed to maintain neutrality while at the same time engaging the interest of jurors in focusing on and following the testimony, and giving trial counsel the ability to elicit evidence responsive to the questions raised."

The rule is not unique to Illinois. More than half of all the states and all of the federal circuits permit jurors to submit written questions for witnesses with or without the discretion of the trial judge, said proponents of the measure.

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One of the supporters, Chief Judge James F. Holderman of the U.S. District Court for the Northern District of Illinois said at the hearing that he has been using written questions by jurors for more than five years. He said the process always has run smoothly and it seems that fewer questions come out of the jury room when jurors are deliberating.

The procedure will work this way: At the conclusion of questioning of a witness by attorneys, the trial judge will determine whether the jury will be afforded the opportunity to question the witness. If questions are deemed appropriate by the trial judge, jurors will be asked to submit any question they have for the witness in writing. No discussion regarding the questions is allowed between jurors. The bailiff will collect any questions and present them to the judge who will mark them as exhibits and make them part of the record.

The judge will read the questions to all the attorneys outside the presence of the jury, and give counsel an opportunity to object to the question. The trial judge will rule on any objections and the questions will either be admitted, modified or excluded.

The trial judge will ask each question that is permitted and will instruct the witness to answer only the question presented. The judge will then provide all counsel with an opportunity to ask follow-up questions limited to the scope of the new testimony.

The Rules Committee recommended the trial judge give jurors a preliminary instruction, explaining the procedure to them; and after testimony in the entire trial is completed give the jury another, final instruction.

It is anticipated that proposed jury instructions will be reviewed and published by the Supreme Court Committee on Jury Instructions in Civil Cases.

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