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September 19, 2008

Terryl Brown Clemons
Acting Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: A.11715/S.8661 (Juror Voir Dire)

Dear Ms. Brown Clemons:

On behalf of the New York City Bar, I write to urge the Governor to veto the above-referenced pending legislation concerning juror voir dire in the New York State Courts. The proposed legislation requires the Chief Administrator of the Courts to adopt a statewide standard for jury selection and to appoint a Supervising Judge for voir dire in each of the 12 Judicial Districts. The City Bar opposes the legislation because it is unnecessary, will delay trials, inconvenience jurors, increase costs to litigants and consume valuable judicial resources that could be better used elsewhere.

The proposed legislation essentially provides for two new opportunities for review of a trial judge's voir dire rulings . These two additional opportunities for review are unnecessary as the New York Civil Practice Law and Rules ("CPLR") already provides litigants two avenues for review: (1) appeal after trial; and (2) an Article 78 proceeding challenging the trial judge's ruling. See CPLR §7803.

The proposed process of a stay of jury selection in order for one litigant to challenge a decision of the trial judge is unduly cumbersome and will (1) put undue settlement pressure on a party; (2) be prejudicial to litigants by delaying their "day in court"; and (3) increase the costs of the litigation.

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Furthermore, the proposed process will inconvenience jurors by asking them to put their lives on hold while waiting for the Supervising Judge's determination. In this regard, we fear that the practical problems of having jurors wait around until the Supervising Judge reaches a decision (or a decision is made to release the jury panel only to reconvene the panel after the Supervising Judge rules) have not been adequately considered. Such practicalities have certainly not been addressed in the proposed legislation. Simply stated, this is not an efficient and effective use of jurors' time.

In addition, in the busiest courthouses in the State, the Supervising Judge would need to dedicate an inordinate amount of time to hearing and resolving voir dire disputes, thereby leaving one fewer judge available to preside over trials and motion practice. The limited resources and demanding case loads already limit the time trial judges have to allocate to jury selection. The proposed legislation unnecessarily increases the burden on the court system and requires the Office of Court Administration ("OCA") to allocate even more judicial resources to the jury selection process. This added burden will adversely impact the ability of the court system to achieve its goal of a just, speedy and efficient resolution of each case.

Finally, the proposed legislation has the unintended effect of dictating how OCA administers its limited resources. This unintended impact implicates the separation of powers. In this respect, whether to remove a judge from judicial duties to focus on administrative duties is a matter best left to OCA, not the legislature.

For the reasons stated above, we request that the proposed legislation not be enacted.

Respectfully submitted,

Cynthia B. Rubin