



## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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TANI CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

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*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

April 14, 2011

Hon. Mike Feuer, Chair  
Assembly Judiciary Committee  
State Capitol, Room 2013  
Sacramento, California 95814

Subject: Assembly Bill 1403 (Committee on Judiciary), as introduced – Support Section 2, if amended

Hearing: Assembly Judiciary Committee – May 3, 2011

Dear Assembly Member Feuer:

The Judicial Council supports Section 2 of AB 1403, the provision sponsored by the California Chamber of Commerce, which would make various clarifying changes to the law governing additur and remittitur that will help prevent unnecessary delays and improve the court's handling of these matters. The Judicial Council does not currently have a position on Section 1 of AB 1403, the provision sponsored by the Consumer Attorneys of California (CAOC) that would amend the statute governing voir dire in civil jury trials to require (rather than encourage) the trial judge to permit counsel to conduct a liberal and probing examination of prospective jurors that is calculated to discover bias or prejudice. The council has serious concerns that this provision, as currently drafted, would unduly interfere with the court's ability to manage the voir dire process in a timely fashion. However, CAOC has indicated that they are not committed to the current language in the bill, and based on their commitment to work cooperatively with the Judicial Council on this issue, the council decided to defer taking action on this provision at the present time, which we believe will assist in efforts to develop a possible alternative consensus approach to addressing their concerns.

The Judicial Council agrees with the sponsor of Section 2 of the bill that there is a gap in the current law that creates uncertainty regarding the timing of a party's acceptance or rejection of a

conditional order for a new trial based on the amount of damages. The council supports clarifying the law in this area, which will assist both litigants and the courts by creating a clear deadline for acceptance or rejection of the addition or reduction of damages in cases where the deadline is not set forth in the court's conditional order.

In addition, providing that a party's failure to respond to the order will be deemed a rejection of the addition or reduction of damages, and a new trial limited to the issue of damages granted automatically, will help avoid the uncertainty that currently exists and ensure a more timely resolution of these matters. Further, by requiring the party who serves an acceptance of a conditionally ordered addition or reduction of damages to prepare an amended judgment reflecting the modified judgment amount will assist the courts in the administration of these cases.

While the Judicial Council is supportive of the overall changes being proposed in this area, we have concerns about some of the specific language not being precise enough. Therefore, the council's support is conditioned on Section 2 of the bill being revised with the following clarifying amendments:

SEC. 2. Section 662.5 of the Code of Civil Procedure is amended to read:

662.5. (a) In any civil action where after trial by jury an order granting a new trial limited to the issue of damages would be proper, the trial court may in its discretion:

(1) If the ground for granting a new trial is inadequate damages, ~~make its issue a conditional order granting the new trial subject to the condition that the motion for a new trial is denied if unless~~ the party against whom the verdict has been rendered consents to ~~an the~~ addition of ~~so much thereof~~ damages in an amount as the court in its independent judgment determines from the evidence to be fair and reasonable.

(2) If the ground for granting a new trial is excessive damages, ~~make its issue a conditional order granting the new trial subject to the condition that the motion for a new trial is denied if unless~~ the party in whose favor the verdict has been rendered consents to ~~a the~~ reduction of ~~so much thereof as~~ damages in an amount the court in its independent judgment determines from the evidence to be fair and reasonable.

(b) If a deadline for acceptance or rejection of the addition or reduction of damages is not set forth in the conditional order, the deadline is 30 days from the date the conditional order is issued served by the clerk. Failure to respond to the order in accordance with this section shall be deemed a rejection of the addition or reduction of damages and a new trial limited to the issue of damages shall be granted automatically.

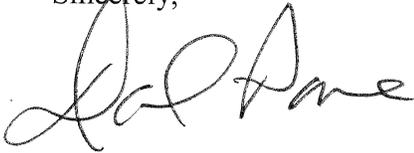
(c) A party filing and serving an acceptance of a conditionally ordered addition or reduction of damages shall prepare at the same time serve and submit to the court a proposed an amended judgment reflecting the modified judgment amount, as well as any other uncontested judgment awards.

If these clarifying amendments were to be adopted, the council would be in full support of Section 2 of the bill.

Hon. Mike Feuer  
April 14, 2011  
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If you have any questions about the Judicial Council's position on AB 1403 or the proposed clarifying amendments, please feel free to contact me at (916) 323-3121 or via email at [daniel.pone@jud.ca.gov](mailto:daniel.pone@jud.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone". The signature is fluid and cursive, with the first name "Daniel" and last name "Pone" clearly distinguishable.

Daniel Pone  
Senior Attorney

DP/lp

cc: Members, Assembly Judiciary Committee

Ms. Nancy Drabble, Chief Executive Officer/Chief Legislative Counsel, Consumer Attorneys of California

Ms. Mira Guertin, Policy Advocate, California Chamber of Commerce

Ms. Paloma Pérez, Associate Legislative Counsel, Consumer Attorneys of California

Mr. Drew Liebert, Chief Counsel, Assembly Judiciary Committee

Mr. Kevin Baker, Deputy Chief Counsel, Assembly Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy





## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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CURTIS L. CHILD  
*Director, Office of Governmental Affairs*

June 24, 2011

Hon. Noreen Evans, Chair  
Senate Judiciary Committee  
State Capitol, Room 4032  
Sacramento, California 95814

Subject: AB 1403 (Committee on Judiciary), as amended June 23, 2011 - Support Section 2  
Hearing: Senate Judiciary Committee – July 5, 2011

Dear Senator Evans:

The Judicial Council supports Section 2 of AB 1403, the provision sponsored by the California Chamber of Commerce, which would make various clarifying changes to the law governing additur and remittitur that will help prevent unnecessary delays and improve the court's handling of these matters. As explained below, the council does not have a position on the remaining provisions in the bill.

The Judicial Council does not currently have a position on Section 1 of AB 1403, the provision that would amend the statute governing voir dire in civil jury trials, sponsored by the Consumer Attorneys of California. The prior version of the bill would have amended the voir dire statute to require (rather than encourage) the trial judge to permit counsel to conduct a liberal and probing examination of prospective jurors that is calculated to discover bias or prejudice. The council continues to have serious concerns that that provision would have unduly interfered with the court's ability to manage the voir dire process in a timely fashion. However, we very much appreciate the responsiveness of the author and sponsor to these concerns, and their willingness to amend the bill by making only non-substantive changes to the voir dire statute while we

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pursue cooperative efforts to develop a possible alternative consensus approach to addressing their concerns.

The Judicial Council agrees with the sponsor of Section 2 of the bill that there is a gap in the current law that creates uncertainty regarding the timing of a party's acceptance or rejection of a conditional order for a new trial based on the amount of damages. The council supports clarifying the law in this area, which will assist both litigants and the courts by creating a clear deadline for acceptance or rejection of the addition or reduction of damages in cases where the deadline is not set forth in the court's conditional order.

In addition, providing that a party's failure to respond to the order will be deemed a rejection of the addition or reduction of damages, and a new trial limited to the issue of damages granted automatically, will help avoid the uncertainty that currently exists and ensure a more timely resolution of these matters. Further, by requiring the party who serves an acceptance of a conditionally ordered addition or reduction of damages to prepare an amended judgment reflecting the modified judgment amount will assist the courts in the administration of these cases.

The Judicial Council does not have a position on Section 3 of the bill, as the issue of what constitutes recoverable costs is outside its purview.

For these reasons, the Judicial Council supports Section 2 of AB 1403.

Sincerely,



Daniel Pone  
Senior Attorney

DP/lp

cc: Members, Senate Judiciary Committee

Ms. Nancy Drabble, Chief Executive Officer/Chief Legislative Counsel, Consumer Attorneys of California

Ms. Mira Guertin, Policy Advocate, California Chamber of Commerce

Ms. Paloma Pérez, Associate Legislative Counsel, Consumer Attorneys of California

Mr. Kevin Baker, Deputy Chief Counsel, Assembly Judiciary Committee

Ms. Ronak Daylami, Counsel, Senate Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



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*Interim Administrative Director of the Courts*

CHRISTINE PATTON  
*Interim Chief Deputy Director*

CURTIS L. CHILD  
*Director, Office of Governmental Affairs*

September 15, 2011

Hon. Edmund G. Brown, Jr.  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: AB 1403 (Committee on Judiciary) – Request for Signature

Dear Governor Brown:

The Judicial Council supports Section 2 of AB 1403, the provision sponsored by the California Chamber of Commerce, which would make various clarifying changes to the law governing additur and remittitur that will help prevent unnecessary delays and improve the court's handling of these matters. As explained below, the council does not have a position on the remaining provisions in the bill.

The Judicial Council agrees with the sponsor of Section 2 of the bill that there is a gap in the current law that creates uncertainty regarding the timing of a party's acceptance or rejection of a conditional order for a new trial based on the amount of damages. The council supports clarifying the law in this area, which will assist both litigants and the courts by creating a clear deadline for acceptance or rejection of the addition or reduction of damages in cases where the deadline is not set forth in the court's conditional order.

In addition, providing that a party's failure to respond to the order will be deemed a rejection of the addition or reduction of damages, and a new trial limited to the issue of damages granted automatically, will help avoid the uncertainty that currently exists and ensure a more timely resolution of these matters. Further, by requiring the party who serves an acceptance of a conditionally ordered addition or reduction of damages to prepare an amended judgment

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reflecting the modified judgment amount will assist the courts in the administration of these cases.

Section 1 of AB 1403 would make various changes and clarifications to the law governing voir dire in civil cases. The Judicial Council had significant concerns with language in the introduced version of the bill that would have unduly interfered with the court's ability to manage the civil voir dire process in a timely fashion. At the request of the Chief Justice, the council put together a collaborative working group that included plaintiff and defense bar representatives, judicial branch leaders, judges and court administrators, in an effort to address the underlying concerns of the author and sponsor on voir dire. Through this cooperative effort, the working group was able to achieve consensus on proposed changes to the civil voir dire statute, the bulk of which are contained in AB 1403. The Judicial Council sought some further substantive and clarifying amendments to the proposal to help preserve the court's discretion in this area, all of which were agreed to by the author and sponsor. With those amendments, the council has no position on the voir dire portion of the bill.

The Judicial Council also does not have a position on Section 3 of the bill, as the issue of what constitutes recoverable costs is outside its purview.

For the above reasons, the Judicial Council requests your signature on AB 1403.

Sincerely,



Daniel Pone  
Senior Attorney

DP/lp

cc: Ms. Nancy Drabble, Chief Executive Officer/Chief Legislative Counsel, Consumer Attorneys of California

Ms. Mira Guertin, Policy Advocate, California Chamber of Commerce

Ms. Paloma Pérez, Associate Legislative Counsel, Consumer Attorneys of California

Mr. Kevin Baker, Deputy Chief Counsel, Assembly Judiciary Committee

Ms. Ronak Daylami, Counsel, Senate Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor