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Jury-pool selection challenged

4 years of verdicts may face scrutiny

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Maricopa County's jury-selection process, which uses computer programs to increase the likelihood that you will be summoned to a court close to home, is being challenged by attorneys who claim it may be unconstitutional.

If they succeed, it could call into question thousands of criminal- and civil-court verdicts over the past four years.

Presiding Judge Barbara Mundell of Maricopa County Superior Court has suspended the practice effective Aug. 14 until a Pinal County Superior Court judge can determine its legality.

State law says that Superior Court jurors must be chosen randomly from within each county but not that they may be chosen from subsets.

Since March, four attorneys in civil cases have demanded new trials or more randomly chosen juries.

"The right to a fair and impartial jury is a cornerstone of our justice system," said attorney Nick Hentoff, who plans to file a criminal appeal. "That right shouldn't be sacrificed to judicial convenience."

Phoenix defense attorney Larry Hammond added that "it does seem to be relatively clear that while this change in 2002 may serve efficiency and save money and be better for the convenience of prospective jurors, I do not think it was consistent with the Arizona statutes and it may not be consistent with the Arizona Constitution."

The selection process, which has been used since 2002, uses algorithms involving ZIP codes to lessen juror travel times. The formula lessens the chance that a Wickenburg resident would be assigned to the southeast court in Mesa or a Gila Bend resident would have to travel to the northeast court in north Phoenix.

The first criminal-case jury motion was filed Thursday by Dennis Jones at the Office of the Legal Defender on behalf of a man going on trial to be resentenced for first-degree murder.

"None of us were aware (this selection process) existed," he said. "The first I heard of it was last Friday (July 21). "We've got to raise this issue now because it cuts to the integrity of the court system."

Other attorneys have vowed to file appeals next week.

"It's very concerning because we rely on the system of jury selection being accurately and correctly done within the statutes," said attorney David Derickson, who plans to appeal on behalf of a client convicted of first-degree murder. "We're

choosing jurors on the presumption that they came before us according to the laws of the state."

Former Presiding Judge Colin Campbell, who instituted the program, said the jury-selection system was modeled after a California program and was intended to make jury service easier on citizens.

"We've been doing it for four years, and no one has ever raised an issue about it until now," Campbell said. "It just didn't seem very controversial at the time."

"The question is whether that is sufficiently random to satisfy the statute," he said.

Bob James, director of jury management, thinks it is.

"Case law is silent about what is 'random,' " James said. "When all's said and done, everyone has the greatest possibility of being summonsed downtown."

The issue began to come to a head when jury consultants on trials at the northeast court complex at 40th Street and Union Hills Road noticed that their panels were comprised of mostly affluent and well-educated Whites, reflecting the populations of Scottsdale and Paradise Valley, instead of a cross section of the county.

The first motion for a retrial on the basis of jury selection was filed in March, and others have since followed suit.

Hammond does not believe a ruling overturning Maricopa County's practice would be retroactive to all jury trials since the program's inception.

Defense attorney Lisa Posada disagreed, calling the right to a random jury "fundamental," though she doubted the higher courts would rule to remand cases.

"The courts won't want to bring themselves to their knees," she said. "But if it affects future cases, why was it not an issue then?"

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