

**MASSACHUSETTS SUPERIOR COURT
STANDING ORDER 1-15:
Participation in Juror Voir Dire by
Attorneys and Self-Represented Parties**

(Applicable to All Counties)

A. Purpose.

The purpose of this Standing Order is to provide an interim procedure for the implementation of St. 2014, c. 254, § 2, pending completion of the work of the Supreme Judicial Court Committee on Juror Voir Dire. The Superior Court anticipates that this Standing Order may be superseded by, or may be modified in response to, such rules, protocols, or guidelines as the Supreme Judicial Court may hereafter adopt or approve, as well as in response to experience in the implementation of this Standing Order, including experience with the pilot project referred to in paragraph C(9) hereof. This Standing Order is adopted pursuant to Trial Court Rule V; shall take effect on February 2, 2015, coincident with the effective date of St. 2014, c. 254, § 2; and shall remain in effect until such time as it may be superseded or modified.

B. Preamble.

In enacting St. 2014, c. 254, § 2, the Legislature recognized and preserved the discretion of the trial judge to lead and supervise the process of juror voir dire, including oral examination of prospective jurors by attorneys and self-represented parties in the exercise of the right granted by the statute. The Superior Court recognizes that trial judges may properly exercise discretion to employ procedures for the examination of prospective jurors by attorneys and self-represented parties that may differ from those set forth herein, as well as to use written juror questionnaires where they deem appropriate in addition to the Confidential Juror Questionnaire required by G. L. c. 234A, § 22 (hereinafter, the “statutory Confidential Juror Questionnaire”). This Standing Order fully preserves the discretionary authority of the trial judge with respect to the examination and

selection of jurors in each case, and provides a standard procedure that will apply in each civil and criminal case unless otherwise ordered by the trial judge, while permitting attorneys and self-represented parties a fair opportunity to participate in voir dire so as to identify inappropriate bias.

C. Procedure:

1. Any attorney or self-represented party who seeks to examine the prospective jurors shall serve and file a motion requesting leave to do so. In civil cases such motion shall follow the procedure provided by Superior Court Rule 9A, and shall be filed with the Court, along with any opposition or other response received, not later than the earlier of (a) the final trial conference if such a conference is scheduled in the case, or (b) fourteen days prior to the date scheduled for trial. In criminal cases the motion shall be served on all parties at least one week before filing, and the motion and any opposition or other response shall be filed with the Court not later than two business days prior to the scheduled date of the final pretrial conference, or, in the event that no final pretrial conference is scheduled, five business days before the scheduled trial date.

2. The motion shall identify generally the topics of the questions the moving party proposes to ask the prospective jurors. Topics identified shall be interpreted to include reasonable follow-up questions. Any opposition or response to any such motion may address the proposed topics. The trial judge may, in the exercise of discretion, and after notice to the parties, require attorneys and self-represented parties to submit the specific language of the proposed questions for pre-approval. The motion and any responsive filing shall also include any proposed language for brief preliminary instructions on principles of law to be given pursuant to paragraph 5(b) hereof.

3. The trial judge shall approve or disapprove the topics of questions proposed, or, if the trial judge requires pre-approval of the specific language of the proposed questions, shall approve or disapprove each proposed question. In doing so the judge shall give due regard to the goals of: (a)

selecting jurors who can and will decide the case based on solely the evidence and the law, fairly and impartially to all parties, without in the process exposing jurors to any extraneous matter that would undermine their impartiality; (b) conducting the selection process with reasonable expedition, in proportion to the nature and seriousness of the case and the anticipated length of the trial, and with due regard for the needs of other sessions that draw on the same jury pool for access to potential jurors; and (c) respecting the dignity and privacy of each potential juror.

4. (a) Questions that should generally be approved are:

(1) those seeking factual information about the prospective juror's background and experience pertinent to the issues expected to arise in the case, along with reasonable follow-up questions regarding whether and how such background or experiences might influence the juror in the case, provided that questions that would elicit sensitive personal information about a juror, or that specifically reference information provided in a juror's statutory Confidential Juror Questionnaire, shall be permitted only outside the presence or hearing of other jurors, so as to preserve the confidentiality required by G. L. c.234A, s. 23.

(2) those regarding preconceptions or biases relating to the identity of the parties or the nature of the claims or issues expected to arise in the case.

(3) those inquiring about the prospective jurors' willingness and ability to accept and apply pertinent legal principles as instructed, after consultation with the judge regarding the principles of law on which the judge will instruct the jury.

(b) Questions that should generally be disapproved are those:

(1) that duplicate the questions that appear on the statutory Confidential Juror Questionnaire, or any other written juror questionnaire used in the case, but questions seeking further detail regarding information provided on a juror's questionnaire, or completion of any uncompleted answers on the

questionnaire, should generally be approved, subject to the limitation stated in paragraph (a)(1) hereof;

(2) regarding the prospective juror's political views, voting patterns, party preferences, religious beliefs or affiliation, reading or viewing habits, patterns of charitable giving, opinions on matters of public policy, hobbies or recreational activities, or similar matters, or regarding insurance, except insofar as such matters may be relevant to issues expected to arise, or may affect the juror's impartiality in the case;

(3) regarding the outcome of any trial in which the prospective juror has previously served as a juror, or deliberations in or the prospective juror's vote in such trial;

(4) purporting to instruct jurors on the law;

(5) that make arguments on any issue of fact or law; that tend to indoctrinate or persuade; that encourage the juror to identify with a party, victim, witness, attorney, or other person or entity, or to send a message; or that encourage the juror to prejudge any issue in the case, to make a commitment to support a particular result, or to do anything other than remain impartial and follow the Court's instructions.

(6) that require a juror to guess or speculate about facts or law.

(7) that would tend to embarrass or offend jurors or unduly invade jurors' privacy.

5. Prior to any questioning by attorneys or self-represented parties, the trial judge shall:

(a) provide the venire with a brief description of the case, including the nature of the facts alleged and of the claims or charges, including the date and location of the pertinent alleged event(s), and the identity of persons or entities significantly involved;

(b) provide the venire with brief, preliminary instructions on significant legal principles pertinent to the case. Such instructions should include a brief recitation of: the burden and standard of proof; the elements of at least the primary civil claim or at least the most serious criminal charge, and,

if appropriate to the case and requested by counsel or a self-represented party, the elements of any affirmative defense that will be presented to the jury; and, in criminal cases, the defendant's right not to testify.

(c) explain to the venire the empanelment process, including, in cases where attorneys and/or self-represented parties will pose questions, the nature and topics of the questions that will be posed, and that any juror who finds either a particular question or the process of questioning by attorneys or self-represented parties intrusive on the juror's privacy may request to be permitted to decline to answer and/or that steps be taken to protect the privacy of any information disclosed. Upon request, the judge may permit each party to make a brief introductory statement to the venire limited to explaining the process and purpose of the questioning of jurors by attorneys or self-represented parties.

(d) ask all questions required by statute or case law, and any additional questions the judge deems appropriate in light of the nature of the case and the issues expected to be raised. The judge may ask questions of the venire as a group, but should conduct at least part of the questioning of each prospective juror individually outside the presence or hearing of other jurors.

(e) as to each prospective juror questioned individually, excuse the juror if the judge determines that service would pose a hardship, or if the judge has doubt as to the juror's impartiality; otherwise find the juror indifferent and able to serve.

6. After the judge has found an individual juror indifferent and able to serve, the judge shall permit questioning by attorneys or self-represented litigants if and to the extent that the judge has previously approved such questioning upon motion submitted in the manner provided herein. Such questioning shall begin with the party having the burden of proof.

(a) Except as provided in paragraphs C(6)(b) and C(9) hereof, the judge may require that such questioning be conducted of each prospective juror individually, outside the presence or hearing of

other jurors. Parties may assert challenges for cause based on the juror's responses to questions posed by attorneys or self-represented parties, notwithstanding that the judge has previously found the juror indifferent based on the judge's questioning and information provided in the statutory Confidential Juror Questionnaire. If the juror is not excused for cause upon such challenge, the judge may require the exercise of any peremptory challenge at that time, beginning with the party who has the burden of proof and, in civil cases, the judge may alternate sides thereafter. Alternatively, the judge may seat the juror subject to the parties' later exercise of peremptory challenges.

(b) Upon request of one or both parties, the trial judge may permit counsel or self-represented parties to question jurors as a group, in a so-called "panel voir dire" procedure. Such questioning shall occur of those jurors whom the judge has already questioned individually and found indifferent and able to serve, after the judge has so found with respect to at least the number of jurors that will be seated for trial. If questioning occurs in this form, the judge shall not permit any questions that would elicit sensitive personal information about an individual juror, or that would specifically reference information provided in a juror's statutory Confidential Juror Questionnaire. Jurors to whom questions are addressed, or who respond to questions, shall be identified on the record by juror number only. After completion of questioning the parties may assert challenges for cause based on responses to questions posed by attorneys or self-represented parties, although the judge has previously found the challenged juror indifferent. The judge shall require that such challenges for cause, as well as peremptory challenges, be asserted outside the hearing of other jurors. Upon any challenge for cause, the judge may allow opposing counsel further opportunity to question the juror.

7. Whether questioning of jurors by attorneys or self-represented parties occurs individually or in a group, any party may object to a question posed by another party by stating "objection," without elaboration or argument. The judge may rule on the objection in the presence of the juror or jurors, or

may hear argument and rule on the objection outside the presence or hearing of the juror or jurors.

8. The trial judge may set a reasonable time limit for questioning of prospective jurors by attorneys or self-represented parties, giving due regard to (1) the objective of identification of inappropriate bias in fairness to all parties; (2) the interests of the public and of the parties in reasonable expedition, in proportion to the nature and seriousness of the case and the length of the anticipated evidence, and (3) the needs of cases scheduled in other sessions drawing on the same jury pool for access to prospective jurors.

9. The Court will establish a pilot project, in which judges who volunteer to do so will conduct so-called “panel voir dire,” according to a consistent procedure to be determined and described in a separate document. During the course of the pilot project, the Court will compile data regarding identified measures. Upon completion of the pilot project, the Court will issue a public report of such data.



Judith Fabricant
Chief Justice

Adopted: December 5, 2014

Effective: February 2, 2015