

IMPANELMENT

The jury venire should be brought in and seated in the spectators' section.

Court Officer: Hear ye. Hear ye. Hear ye. All persons having business before the Honorable _____, Justice of the _____ District Court, draw near, give your attendance and you shall be heard. God save the Commonwealth of Massachusetts. Please be seated.

Clerk. Good morning. Today is [day of week] , [date] at the _____ District Court. You are now sitting in the Jury Session, and the Honorable [name of judge] is presiding. The matter before us is [name of case and docket number] .

Judge. Thank you (Mr.) (Ms.) [name of clerk] . Good morning, ladies and gentlemen. We're about to begin a jury trial. In order to do that, we will first need to impanel a jury. I am being assisted today by the session clerk, [name of clerk] , and you already met Officer [name of court officer] this morning. (Ms.) (Mr.) [name of clerk] , will you kindly swear in the members of the jury?

Clerk. Will all potential jurors please rise and raise your right hands? Do each of you solemnly swear or affirm under the pains and

penalties of perjury that you will make true answers to such questions as shall be put to you by the Court in the matter now pending, so help you God? Please be seated.

If a member of the venire prefers to omit reference to the Deity, they may be sworn by substituting the words “under the penalties of perjury” for the words “so help you God.” See G.L. c. 233, § 19.

Judge: We are about to choose a jury for the trial of a civil case, which means that it is a dispute between private parties. The plaintiff is the person or party who is bringing the claim, and the plaintiff is [name of plaintiff] from [city/town]. [Plaintiff] is represented by [name of attorney] from [city/town]. Attorney [name of attorney], would you kindly introduce yourself and your client to the jury venire?

Introductions.

Judge: Thank you. The person or party being sued is called the “defendant” in court terminology. The defendant in this case is [name of defendant] from [city/town]. [Defendant] is represented by [name of attorney] from [city/town]. Attorney [name of attorney], would you kindly introduce yourself and your client to the jury?

Introductions.

Judge: Thank you. This is a case involving a claim by [name of plaintiff] against [name of defendant] for [short description of case]. My description is not evidence about the case, but I want all of you to

know at least generally what the case involves.

In addition to [plaintiff and defendant], there are a number of additional potential witnesses in this case, and as I read the potential witnesses' names and identifying information, I would ask that each stand up. Do not say anything, but stand up one at a time so that the prospective jurors can see you.

Witnesses stand and are identified by name and city/town for identification purposes. [It is optional to include employer.] The jury should not be told for which party any prospective witness may appear. Commonwealth v. Bolduc, 383 Mass. 744, 747-748 (1981).

Best Practice: A judge should swear in witnesses individually when they are called to the stand to testify. If witnesses are sworn as a group, jurors may speculate as to why one or more of them did not ultimately testify, and a witness who was not present may be mistakenly allowed to testify without being sworn.

If applicable. **You may also (receive a medical report) (view an audio / visual deposition) of Dr. _____ of [affiliation and city/town].**

To assist you in planning, I will say that we expect to recess by 4:30 today. If the trial does not conclude today, anyone chosen to be a juror must return tomorrow. We usually take a lunch break between 1 and 2 o'clock and shorter breaks during the day as may be necessary or convenient.

The parties estimate that it will take __ days to try this case and present all of the evidence. The jury will then meet to discuss and consider the evidence and issues in the case, which we call deliberation, and to reach a decision, which we call a verdict. There is no set time for a jury to decide a case; it is up to the jury to take the time it needs. If the anticipated length of the trial poses an extreme hardship to you, please let me know at sidebar. An extreme hardship typically means an urgent medical appointment, pre-planned travel, or significant life events.

At the outset, I instruct you that all parties stand as equals before the bar of justice. All parties are entitled to a fair and impartial jury, that is, jurors who will: (1) fairly evaluate the evidence; (2) follow the law as instructed; and (3) render a fair and just verdict based solely on the evidence presented at this trial.

Jurors, of course, are expected to bring their own life experiences, thoughts, opinions, beliefs, and common sense to this court and the deliberation room. Everyone, including me, makes assumptions and forms opinions arising from our own personal backgrounds and experiences. These biases or assumptions may have to do with any number of things, including an individual's race,

color, nationality, ethnicity, age, disability, socio-economic status, religious beliefs, gender, or sexual orientation. I instruct you that a verdict must not be based on any such bias, including conscious or subconscious bias.

Bias, whether it is conscious or subconscious, can affect how we evaluate information and make decisions. It can impact what we see and hear, how we remember what we see and hear, how we make important decisions, and may even cause us to make generalizations or to pre-judge.

While each of you brings your unique life experience with you to court today, as jurors, you must be alert to recognize whether any potential bias might impact your ability to fairly and impartially evaluate the evidence in this case, follow my instructions, and render a fair and just verdict that is based solely on the evidence presented in this case.

I am now going to ask you to respond to some questions that will assist us in obtaining a fair and impartial jury. If your answer to any of my questions is “yes,” please hold up your juror card and the court officer will read your juror number out loud. At the end of my questions, you may be called up to the judge’s bench one at a time so

that I can talk to you.

When I pose questions to the whole jury pool or the attorneys or I ask you questions at sidebar, we are not trying to pry or make you uncomfortable. Instead, we are doing this to determine whether you are able to serve as a fair juror.

If we do not choose you to serve on the jury, please do not be offended. Sometimes a person who would be a fair juror in one case might have difficulty being fair in another case.

Please keep these thoughts in mind when you answer the questions that the attorneys and I ask you.

- 1. Do any of you know or are you related to the plaintiff?**
- 2. Do any of you know or are you related to the defendant?**

[If plaintiff or defendant is a corporation, trust or other type of business

***entity*: Are you, members of your immediate family or close personal friends employees, officers, directors or in any other way related, either now or in the past, to the plaintiff or the defendant?]**

3. Do you know or are you related to (either) (any) of the attorneys?

4. Do you know or are you related to any of the witnesses in this

case?

5. Do you have an interest that would be affected by the result of this case?

6. Based on the limited information you have heard, have you expressed or formed any opinions about this case?

7. Are you aware of any bias or prejudice you have towards either the plaintiff or the defendant because of the type of case?

8. Do you know of any reason why you would not be fair and impartial in this case, or be able to render a true and just verdict, based solely on the evidence and the law?

[Optional] **9. Is there any reason which might make it very difficult for you to be a juror? [For example, do you have any personal concerns, difficulty with English, physical or medical concerns, or religious or ethical beliefs or one of the hardships I have previously described which might make it difficult for you to be a juror in this case?]**

General Laws c. 234A, § 67A, requires Questions 1-7 to be posed to the venire upon motion of either party. It also directs that inquiry be made as to any extraneous issues that might affect impartiality including community attitudes, prejudicial material, and preconceived opinions toward the credibility of certain classes of persons. General Laws c. 234, § 28 permits individual voir dire of jurors by the judge or, with the judge's permission, by the lawyers directly outside the presence or hearing of other potential jurors.

Mass. R. Civ. P. 47 requires the court to pose Question 1-7 and Question 8 sua sponte, even without request by the parties. Rule 47(a) further provides that the "trial judge may submit, of his own motion or on that of any party, such additional questions as he deem s

proper. The trial judge may also, on motion of any party, permit the parties or their attorneys to make such further inquiry of the jurors on oath as he deems proper.”

OPTIONAL QUESTIONS

1. Have you or any immediate family member or close personal friend ever had a claim or lawsuit filed against them by someone alleging injuries in a (motor vehicle) (slip and fall) accident?

2. Have you or any immediate family member or close personal friend ever filed a claim or lawsuit against another person or entity for alleged injuries resulting from a (motor vehicle) (slip and fall) accident?

3. Have you or any immediate family member or close personal friend ever been injured in a motor vehicle/slip and fall type accident but did not file a claim or lawsuit as a result?

4. Do you have any negative feelings about people who sue for damages?

5. Do you have negative feelings about people who bring claims or file lawsuits as a result of alleged injuries from accidents?

6. Do you have feelings – either negative or positive – regarding someone that may have difficulty with the English language and may need the assistance of an interpreter?

The judge must follow-up on any of the jurors' affirmative responses to the mandatory questions, the above optional questions, or other questions the judge decides to pose. The court should continue with either Section A (Judge voir dire without attorney participation on page 10), Section B (Individual voir dire with attorney participation at page 11), or Section C (Panel voir dire at page 12).

Regardless of the method used, it is strongly recommended that each potential juror be brought to the sidebar prior to being seated, including jurors who did not affirmatively respond to a question and regardless of the voir dire procedure employed. A brief individual check-in often reveals significant issues not revealed by the statutory questions including, for example, hearing deficits or previously unidentified language issues.

We will now call you each by the number on your jury card. I ask you to bring your belongings with you (and approach the attorneys and I at sidebar) (and proceed to the jury box as directed by the clerk).

Would the attorneys please approach the sidebar?

In a case to be tried to a jury of six persons, seven jurors must be impaneled although a lesser number may be impaneled but only upon a finding of cause. G.L. c. 234A, § 68. A trial may proceed with less than six jurors only upon the agreement of all parties. See G.L. c. 234A, § 68; Mass. R. Civ. P. 48.

Alternate jurors should not be identified until immediately prior to jury deliberations. G.L. c. 234A, § 68.

A. JUDGE VOIR DIRE WITHOUT ATTORNEY PARTICIPATION

Would the attorneys please approach the sidebar?

After inquiring as to the statutory questions and any others deemed appropriate, challenges for cause are to be made at this time. If any seated juror is excused, that juror should be replaced with the next numbered juror.

Best Practice: After conducting an individual voir dire, and hearing and acting on challenges for cause, make a finding that the jurors are indifferent, and then proceed to peremptory challenges.

At sidebar: **Please keep your voices down so that the jury does not**

overhear. Are there any challenges for cause?

Each juror not excused for cause should be found indifferent and seated in the jury box.

I find the juror stands indifferent.

Continue until the jury box is full of jurors found indifferent. Once the jury box is full, the parties should exercise their peremptory challenges at this time.

Best Practice: Although not required, the Court should direct the plaintiff to use their peremptory challenges first and until content. The Court should then require the defendant to exercise their peremptory challenges. When the defendant is content, return to the plaintiff to exercise any remaining challenges; while it is a customary practice to limit the remaining challenges only as to jurors who have been seated subsequent to the parties' last challenge, there is no requirement to do so. Continue until all parties are satisfied or all peremptory challenges have been used. Once a party is satisfied, that party may not later challenge a juror with whom they were previously satisfied.

Is the plaintiff content?

Here the plaintiff should exercise their peremptory challenges, and any challenged jurors should be replaced. When the plaintiff ceases to challenge:

Is the defendant content?

Here the defendant should exercise their peremptory challenges, and any challenged jurors should be replaced.

[Continue on page 14.]

B. INDIVIDUAL VOIR DIRE WITH ATTORNEY PARTICIPATION

Would the attorneys please approach the sidebar.

After inquiring individually of each juror as to any affirmative responses to the statutory questions, issues raised by responses on the confidential questionnaire, or any other inquiry deemed appropriate, the judge should permit the attorneys to ask questions of each juror at the sidebar in accord with the District Court Standing Order 1-18. Each juror not excused for cause should be seated in the jury box.

Best Practice: After both parties have completed their individual voir dire of the juror, the judge should hear and act on challenges for cause, with the plaintiff exercising its challenges first. Challenges for cause should be made out of earshot of the juror. Do not require the parties to exercise peremptory challenges until the requisite number of indifferent jurors have been seated.

At sidebar: **Please keep your voices down so that the jury does not overhear. Are there any other challenges for cause?**

Each juror not excused for cause should be found indifferent and seated in the jury box.

I find the juror stands indifferent.

Best Practice: Although not required, the Court should direct the plaintiff to use their peremptory challenges first and until it is content with the panel. The Court should then require the defendant to exercise their peremptory challenges. When the defendant is content, return to the plaintiff to exercise any remaining challenges; while it is a customary practice to limit the remaining challenges only as to jurors who have been seated subsequent to the parties' last challenge, there is no requirement to do so. Continue until all parties are satisfied or all peremptory challenges have been used. Once a party is satisfied, that party may not later challenge a juror with whom they were previously satisfied.

Is the plaintiff content?

Here the plaintiff should exercise their peremptory challenges, and any challenged jurors should be replaced. When the plaintiff ceases to challenge:

Is the defendant content?

Here the defense should exercise their peremptory challenges, and any challenged jurors should be replaced.

[Continue on page 14.]

C. INDIVIDUAL VOIR DIRE FOLLOWED BY ATTORNEY PANEL

After inquiring individually of each juror as to any affirmative responses to the statutory questions, issues raised by responses on the confidential questionnaire, or any other inquiry deemed appropriate, the judge should hear and act on challenges for cause, with the Commonwealth exercising its challenges first. Challenges for cause should be made out of earshot of the jurors. Jurors not excused for cause should be seated in and around the jury box for the panel voir dire, wherever there is space and a microphone to record their responses. The judge should then initiate the panel voir dire process. See District Court Standing Order 1-18 and Addendum A (Panel Voir Dire).

At this time, the attorneys may ask questions of you individually or as a group. We will begin with the plaintiff (plaintiffs') (attorney(s)) followed by the defendant (defendants') (attorney(s)). They will refer to you by your juror number, so please hold your juror number card in front of you so the attorneys can see it. If you want to answer a particular question confidentially, indicate that to the attorney or the Court and you will be asked to come to the judge's bench to provide your answer.

[If not using entire venire for first panel]

The potential jurors in the back of the room are instructed not to comment at all, even to one another, about anything that happens during this process. However, please listen carefully because you may be asked to answer the same questions later.

Counsel, you may proceed.

The party with the burden goes first. Jurors are to be referred to by their juror number or seat. The judge should have already addressed any limits as to time, the number of questions, and/or subject matter. When questioning is complete, the attorneys should approach the sidebar to address any challenges for cause. If a juror is excused and is to be replaced by a potential juror who was not part of the panel voir dire, that juror should be questioned by the judge and attorneys at the sidebar prior to being seated. After all challenges for cause have been determined, the attorneys will exercise their peremptory challenges.

At sidebar: **Please keep your voices down so that the jury does not overhear.**

I find the panel stands indifferent.

The parties should exercise their peremptory challenges at this time.

Best Practice: Although not required, the Court should direct the plaintiff to use their peremptory challenges first and until it is content with the panel. The Court should then require the defendant to exercise their peremptory challenges. When the defendant is content, return to the plaintiff to exercise any remaining challenges; while it is a customary practice to limit the remaining challenges only as to jurors who have been seated subsequent to the parties' last challenge, there is no requirement to do so. Continue until all parties are satisfied or all peremptory challenges have been used. Once a party is satisfied, that party may not later challenge a juror with whom they were previously satisfied.

Is the plaintiff content?

Here the plaintiff should exercise their peremptory challenges, and any challenged jurors should be replaced. When the plaintiff ceases to challenge:

Is the defendant content?

Here the defense should exercise their peremptory challenges, and any challenged jurors should be replaced.

Swearing in the Jury

Judge. We have a jury. Members of the jury venire who were not chosen for this trial, thank you for your participation today. The court officer will show you out.

(Madam) (Mr.) Clerk, would you please swear in the members of the jury?

Clerk. Members of the jury would you please stand and raise your right hand? Do each of you solemnly swear and affirm that you will well and truly try the issues between the plaintiff(s) and defendant(s) according to the evidence and the law, so help you God? Please be seated.

Clerk. members of the jury, the matter of *[name of plaintiff]* versus *[name of defendant]*, docket number _____, is now before you for trial. The plaintiff claims that the defendant is liable which the defendant denies, and they have placed themselves before the Country, which Country you are. You are now sworn to try the issues. If the defendant is liable, you should say so. If the defendant is not liable, you should say so and no more. Members of the jury,

hearken to the evidence.

NOTES:

1. **Individual voir dire of prospective jurors.** General Laws c. 234A, § 67 provides that, in the following circumstances, a collective examination of the venire is insufficient and that venire members must be examined individually and outside the presence of other jurors:

“if it appears that, as a result of the impact of considerations which may cause a decision or decisions to be made in whole or in part upon issues extraneous to the case, including, but not limited to, community attitudes, possible exposure to potentially prejudicial material or possible preconceived opinions toward the credibility of certain classes of persons, the juror[s] may not stand indifferent.”

“Under [G.L. c. 234A, § 67A], the judge must examine the jurors individually when it appears that issues extraneous to the case might affect the jury’s impartiality. Ordinarily, it is for the judge to determine whether the jury might be influenced by an extraneous issue.” *Commonwealth v. Grice*, 410 Mass. 586, 588 (1991).

When individual voir dire is required, G.L. c. 234A, § 67A mandates that it be done individually and outside the presence of other impaneled or prospective jurors. Posing questions collectively to the venire and then individually interrogating jurors who come forward is insufficient. Individual voir dire may be done at the side bar if other jurors cannot overhear, but it is preferable to question jurors individually outside the presence of impaneled jurors and other venire members. *Commonwealth v. Shelley*, 381 Mass. 340, 353 n.12 (1980).

Individual voir dire may be conducted by the judge or by counsel for the parties, “with the permission and under the direction of the court.” G.L. c. 234A, § 67A. See District Court Standing Order 1-18: Voir Dire Protocol. “[W]hile trial judges must permit attorney-conducted voir dire upon request, the scope of such questioning remains in the discretion of the judge. *Commonwealth v. Dabney*, 478 Mass. 839, 848 (2018).

2. **Verdict of fewer than six jurors.** The Court may take a verdict from fewer than six jurors if all parties agree by stipulation. G.L. c. 234A, § 68.

3. **Implicit bias instructions.** On September 29, 2021, the Supreme Judicial Court promulgated two model jury instructions on implicit bias to “be given at all criminal and civil trials, during the preliminary charge following empanelment and during the final charge prior to deliberations.” The SJC “recommended that trial judges use the language of the Instructions unless the judge determines that different language would more accurately or clearly provide comparable guidance to the jury or better promote the fairness of the trial.” In March of 2019, prior to the release of the SJC’s instructions, the District Court Committees on Racial and Ethnic Fairness and Criminal Proceedings collaborated to issue three instructions with language about implicit bias to be given at empanelment, in preliminary instructions after empanelment, and in final instructions on evaluating the evidence. The language within this instruction is modeled on District Court Model Instructions 1.100, 1.120 and 2.120. The trial judge should evaluate, with input from the parties, whether to use the SJC’s proposed Model Instructions, these District Court instructions or a combination of the two. The SJC’s instructions are available on mass.gov: [Supreme Judicial Court Model Jury Instructions on Implicit Bias | Mass.gov](https://www.mass.gov/info-details/supreme-judicial-court-model-jury-instructions-on-implicit-bias).