

# **District Court Standing Order 1-18: Voir Dire Protocol**

## **Preamble**

Subject to applicable statutes, rules, and controlling authority, the trial judge in each case has discretion to determine a procedure for examining and selecting jurors designed to maintain juror privacy and dignity, identify explicit and implicit bias, and foster efficiency in the session and among sessions using the same jury pool. This standing order provides a standard procedure for 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 through individual voir dire, panel voir dire, or a combination of the two so as to identify inappropriate bias.

## **I. Requests for Attorney or Party Voir Dire.**

In civil and criminal cases, the parties shall submit in writing: any requests for attorney/party voir dire; motions in limine concerning the method of jury selection; proposed subject matters or questions for inquiry by the parties or judge; any proposed preliminary legal instructions to the venire or juror panels; the location within the courtroom where jurors and parties will stand or sit during voir dire; and any other matter setting forth the party's position regarding impanelment.

In a civil case, all voir dire related requests shall be filed in accordance with the Trial Order issued pursuant to District Court Joint Standing Order 1-04 as may be amended from time to time, but not later than (5) business days before trial.

In a criminal case, all voir dire related requests shall be filed by a date set by the Court, but not later than five (5) business days before trial.

A judge may order, or an attorney or party may request, a hearing in advance of the trial date. The attorney or party shall request such a hearing in time for a pre-trial ruling by the trial judge if the attorney or party is requesting extensive participation in voir dire (e.g., panel voir dire or to be allowed to ask a substantial number of questions).

Upon hearing any written request for attorney/party voir dire, consideration should be given to procedural issues including:

- a. a statement of the case to be read to the venire;
- b. the number of jurors to be seated;
- c. the extent of any pre-charge on significant legal principles;
- d. the method and content of the judge's intended voir dire of jurors;
- e. the method and content of any attorney or party participation in voir dire;
- f. judicial approval or disapproval of subject matter or proposed questions;
- g. any time limits on attorney or party voir dire;
- h. the number of peremptory challenges;
- i. the order and timing of the parties' assertions of challenges for cause and peremptory challenges;

- j. any agreement to allow deliberation by fewer jurors in a civil case if seated jurors are dismissed post-impement.

## **II. Scope and Subject Matter of Permissible Attorney or Party Voir Dire.**

### **A. General Matters**

The trial judge shall allow attorney or party voir dire if properly requested according to the time as set forth in paragraph I above. The trial judge has discretion regarding the scope and manner of voir dire.

The judge should, at a minimum, allow the attorneys or parties to ask reasonable follow-up questions seeking elaboration or explanation concerning juror responses to the judge's questions, or concerning any written questionnaire.

A trial judge should allow a reasonable number of questions that: (i) seek factual information about the prospective juror's background and experience pertinent to the issues expected to arise in the case; (ii) may reveal preconceptions or biases, explicit or implicit, relating to the identity of the parties or the nature of the claims or issues expected to arise in the case; (iii) inquire into the prospective jurors' willingness and ability to accept and apply pertinent legal principles as instructed; (iv) are meant to elicit information on subjects that controlling authority has identified as preferred subjects of inquiry, even if not absolutely required; and (v) are appropriate in quantity to the anticipated length and complexity of the trial.

A trial judge may impose reasonable restrictions on the subject matter, time, number of questions, or method of attorney or party voir dire. The judge may utilize individual voir dire, panel voir dire, or any combination of the two. If employing panel voir dire, the trial judge shall determine the procedure and may elect to follow the method set forth in Addendum A to this Order or adopt variations thereof.

A party objecting to a question posed by another party shall state, 'objection,' without elaboration or argument. The judge may rule on the objection in, or outside of, the juror's presence. The trial judge may *sua sponte* strike or rephrase a party's question. The judge may interrupt or supplement a party's questioning to provide the juror(s) with an explanation of the law or the jury trial process. The judge may ask additional questions to assist the judge in determining a juror's impartiality.

An attorney or party may ask questions about the law if approved by the trial judge. The judge may require the questioner to use specific words or phrases and may give an instruction on the law beforehand or at the time the question is asked. If a juror asks a question to clarify an aspect of the law, the questioner shall respond by requesting the judge to answer the question. If intending to challenge a juror for cause as a result of attorney or party voir dire, the questioner ordinarily should lay an adequate foundation showing that, in light of the information or viewpoint expressed, the juror may not be fair and impartial and decide the case solely on the facts and law presented at trial. A juror's "yes" or "no" answer to a question about a viewpoint or experience may not, by itself, support a challenge for cause. An attorney or party challenging a

juror for cause shall state the reason and the court may inquire further, or may decide without further questioning if the judge believes that the existing record is sufficient to resolve the challenge for cause.

## **B. Prohibited and Disfavored Subjects**

1. No attorney or party may inquire into the following prohibited subjects:
  - a. questions framed in terms of how the juror would decide this case (prejudgment), including hypotheticals that are close/specific to the facts of this case (any hypotheticals that may trigger this rule must be presented to the judge before trial);
  - b. questions that seek to commit juror(s) to a result, including, without limitation, questions about what evidence would cause the juror(s) to find for the attorney's client or the party;
  - c. questions having no substantial purpose other than to argue an attorney's or party's case or indoctrinate any juror(s);
  - d. questions about the outcome in prior cases where the person has served as a juror, including the prior vote(s) of the juror or the verdict of the entire jury;
  - e. questions in the presence of other jurors that specifically reference what is written on a particular juror's confidential juror questionnaire.
2. No attorney or party may inquire into any of the following disfavored subjects absent the trial judge's prior express approval:
  - a. the juror's political views, voting patterns or party preferences;
  - b. the juror's religious beliefs or affiliation.

To obtain approval, an attorney or party must at a minimum explain how the inquiry is relevant to the issues, may affect the juror's impartiality, or may assist the proper exercise of peremptory challenges.

## **C. Procedural Matters**

1. Mandatory Voir Dire

The trial judge shall ask all voir dire questions specifically required by statute, court rule, or controlling authority, but retains discretion as to when and how to do so.

## 2. Individual Voir Dire

- a. Questioning shall occur through individual voir dire if: (i) required by statute, rule, or controlling authority; (ii) inquiry concerns private or potentially embarrassing information; or (iii) questioning would specifically reference what is written on a particular juror's confidential juror questionnaire.
- b. The trial judge should conduct an individual voir dire in all cases to: (i) determine whether any juror has any issues concerning hearing, vision, language, mental health, or comprehension, and to determine whether a reasonable accommodation can enable a juror to serve; (ii) address any private or embarrassing information not disclosed in public portions of the voir dire; or (iii) identify any other impediment to jury service that the trial judge and parties might not observe without personal contact with the juror.

## 3. Timing of Challenges

The judge may require exercise of peremptory challenges after filling the jury box with jurors found to stand indifferent, after completion of side bar inquiry of an individual juror, or at some other time after the judge's finding of indifference or, if employing panel voir dire, after the attorneys have completed questioning the panel.

## 4. Maintaining the Record

Counsel and the parties must ensure an accurate record of attorney or party voir dire. During panel voir dire, an attorney or a party must refer to the juror seat number (or juror number) of any individual juror who is questioned individually or who responds audibly. Failure to do so may constitute a waiver of any claim of error arising from any inaudible or unattributed portions of the record.

