



MINNESOTA JUDICIAL TRAINING UPDATE



JUDICIAL GUIDELINES FOR VOIR DIRE

IN 2001 THE MN SUPREME COURT TASK FORCE ON JURY SELECTION RECOMMENDED THAT JUDGES EXERCISE MORE CONTROL OVER THE JURY SELECTION PROCESS TO ENSURE THAT IT IS PROPERLY CONDUCTED, AND SHOULD INTERVENE *SUA SPONTE* WHEN APPROPRIATE;

Authority: See Jury Task Force Final Report: <http://courtnet.courts.state.mn.us/0/?page=2885>

QUESTION: DURING JURY SELECTION WHAT STANDARDS SHOULD YOU APPLY IN RULING ON 'CHALLENGES FOR CAUSE' OR OBJECTIONS TO SPECIFIC QUESTIONS?

ANSWER: MOST CHALLENGES OR OBJECTIONS CAN BE RESOLVED BY APPLYING THE FOLLOWING 5 BASIC RULES:

1) **PURPOSE FOR JURY SELECTION:**

- a) To discover the bases for challenge for cause; and
- b) To gain knowledge to facilitate an informed exercise of peremptory challenges.

2) **IMPARTIALITY: WHEN IS A JUROR ACCEPTABLE:**

- a) The right juror is both willing and able to be neutral, open-minded, and fair.
- b) The test of an impartial juror is not that s/he shall be completely ignorant of the facts and the issues, but that s/he can lay aside his/her impressions or opinions and render a verdict based on the evidence presented in court. *See State v. Andrews, 282 Minn. 386, 165 N.W.2d 528, 534 (1969).*
- c) The "right" juror can be one who knows something about the issues involved and who has some "leanings" but who also understands the nature and importance of the requirement of impartiality and is willing to try to be impartial. *State v. Larson, 447 N.W.2d 593, 599-600 (Minn. App. 1989).*

3) PROPER SCOPE OF VOIR DIRE – GENERAL RULE:

- a) Reasonable latitude should be given parties in the examination of jurors to gain knowledge as to their mental attitude toward the issues to be tried, for the purpose of aiding them in challenging or striking jurors. However, as a general rule, the examination of jurors on voir dire should be restricted to questions which are pertinent and proper for testing the capacity and competency of jurors. The Court may restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper. *Minn. R. Crim. P. 26.02, Subd. 4(1); Minn. R. Civ. P. 42.01.*

4) IMPROPER VOIR DIRE – SIX PROHIBITED CATAGORIES: Judges should generally prohibit voir dire that is conducted for the following improper purposes:

- a) **Educating Jurors:** Voir dire should not be used primarily to persuade, instruct, educate or indoctrinate jurors as to the law, arguments, facts, strategies, or problems in the case.
- b) **Predisposing Jurors:** Voir dire should not be used primarily to predispose jurors to be in favor of or against a party, a witness, or some aspect of the case.
- c) **Speculative Questions:** Jurors should not be asked to speculate about how they might decide the case or how they might react to any factual issue in the case.
- d) **Seeking Commitments:** Jurors should not be asked to commit themselves to vote in a certain way.
- e) **Repetitive Questions:** Attorneys should not be permitted to repeat questions already asked by the judge, by another attorney, or by a questionnaire to which complete and clear answers have already been given.
- f) **Establishing Rapport:** Attorneys should not ask questions or present information about themselves or their client designed primarily to establish rapport with prospective jurors or to get them to identify with their client or their client's cause.

5) BASIC APPROACH – JUDICIAL GOLDEN RULE OF THUMB:

- a) **GENERAL RULE:** Attorneys are entitled to *receive* information from potential jurors through questions designed to achieve the proper purposes of voir dire. Attorneys are not entitled to *give* information about the facts or the law in the case.
- b) Judges should be flexible in the application of these guidelines. An inquiry that appears to violate the above guidelines may nonetheless be appropriate depending on the unique circumstances of your case. Attorneys are permitted to seek out cause, bias, or partiality concerning any potential juror.

HANDOUT FOR ATTORNEYS IMPROPER VOIR DIRE QUESTIONS – EXAMPLES

Scope of Proper Voir Dire:

Attorneys may ask only questions which directly and clearly relate to the purposes of voir dire. They may not ask any of the following types or categories of questions:

- 1. Those designed to examine jurors as to their understanding of the law, such as:**
 - a. Standards of Proof: Preponderance, Clear and Convincing, Reasonable Doubt;
 - b. Comparative Fault and its effects;
 - c. Presumption of Innocence or Exercise of Reasonable Care.
State v. Evans, 352 N.W.2d 824, 826 (Minn. Ct. App. 1984)
- 2. Those designed primarily to educate or indoctrinate jurors as to theories, facts, strategies or problems in the case.**
- 3. Those intended to predispose jurors to be in favor of or against a party, a witness or some aspect of the case, such as:**
 - a. Are you in favor of strict and strong enforcement of all criminal laws?
- 4. Those which ask jurors to put themselves in the place of the Defendant, such as:**
 - a. If you were the Defendant, would you want a person such as yourself on the jury?
- 5. Those which are merely arguments of the case.**
- 6. Those which are hypothetical in nature.**
- 7. Those asking jurors about whether they have been falsely accused, such as:**
 - a. Do you think it is possible for anyone to be arrested and charged for a crime or accused of wrongdoing for which the Defendant is innocent or not liable?
 - b. Have you ever been blamed in your life for something you did not do?
State v. Owens, 373 N.W.2d 313, 315 (Minn. 1985).
- 8. Those which ask the jurors to commit themselves to vote in a certain way or to take any position whatsoever before they hear the evidence.**

9. **Those which comment on possible punishment or adverse effects if Defendant is convicted.** State v. Finley, 214 Minn. 228, 231-2, 8 N.W.2d 217, 218 (Minn. 1943).
10. **Those which attempt to present evidence.**
11. **Those which inquire, offer evidence or comment upon the constitutionality of:**
 - a. Searches conducted in the case;
 - b. The manner in which statements were taken from the Defendant in the case;
 - c. The arrest of the Defendant in the case. These matters are questions of law and not issues for the jury to consider as fact finders.
State v. Wajda, 296 Minn. 29, 6 N.W.2d 1 (Minn. 1973).
12. **Those which repeat questions previously asked by the judge and those to which clear and complete answers have been given.**
13. **Those which ask jurors to speculate as to what their reactions might be to certain evidence or how certain evidence may affect their decision.**
14. **Those asking jurors how certain evidence may influence their verdict.**
State v. Bauer, 189 Minn. 280, 249 N.W. 40 (1933); State v. Evans at 826.
15. **Any questions regarding settlement efforts.**
16. **Those that suggest the jury should return a large verdict.**
17. **Those meant to solicit promises from the panel based upon hypothetical facts.**
18. **Those attempting to establish rapport with the jury panel.**
19. **Any question which violates a juror's equal protection rights, such as:**
 - a. **Race.** Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).
 - b. **Gender.** J.E.B. v. Alabama, 511 U.S. 127, 114 S.Ct. 1419, 128 L.Ed. 2d 89 (1994).
 - c. **Age.** State v. Everett, 472 N.W.2d 864 (Minn. 1991).
 - d. **Religion.** State v. Davis, 504 N.W.2d 767 (Minn. 1993).
20. **Any question designed to violate the privacy of the jury panel.**

Authority: See Minnesota Supreme Court Jury Task Force Final Report:
<http://courtnet.courts.state.mn.us/0/?page=2885>