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Directive #21-06

[Questions or comments may
be directed to 609-292-2634.]

TO: Superior Court Judges

FROM: Philip S. Carchman, JAD

**SUBJ: APPROVED JURY SELECTION STANDARDS, INCLUDING MODEL
VOIR DIRE QUESTIONS**

DATE: DECEMBER 11, 2006

Attached are the Jury Selection Standards ("Standards") approved by the Supreme Court. The Court indicated its approval of these Standards in its September 15, 2006 Administrative Determinations regarding the recommendations of the Special Committee on Peremptory Challenges and Jury Voir Dire. The attached Standards include the relevant commentary from the Report of the Special Committee ("Report") as well as the voir dire questions to be used for all civil jury trials, all criminal jury trials, as well as voir dire questions for certain specific civil case types. The Supreme Court in its Administrative Determinations directed the distribution of these materials to all trial court judges.

As set forth in the Standards, use of the model voir dire questions is mandatory. Keep in mind that these model questions are a base. As noted in the Report, you may ask additional voir dire questions, including supplemental questions suggested by trial counsel at the Rule 1:8-3 conference. The Standards and model questions promulgated by this Directive are to be used during each jury selection for trials that begin on or after Monday, January 22, 2007. That date will allow time for trial judges to review these materials and prepare for the conferences that will need to occur in advance of that date. While the model questions may be used for jury selections beginning prior to that date, as I understand that many judges are already doing, their use during this interim period is not required. The January 22, 2007 effective date also will allow additional time to address any procedural questions that trial judges may raise, including any questions raised at the recent Judicial College.

The Court in its Administrative Determinations also approved the Special Committee's recommendation for creation of a standing committee on the jury selection process and procedures. Formation of the Supreme Court Committee on Jury Selection in Civil and Criminal Trials is underway. Part of that committee's initial charge will be to review the model voir dire questions promulgated by this Directive for any necessary revisions or refinements, e.g., suggestions by the Judiciary Advisory Committee on Americans with Disabilities Act Compliance.

Additionally, please also be aware that the Court, in accordance with the Special Committee's recommendation has amended Rule 1:8-3(f), effective September 1, 2006, to require that attorneys submit any proposed supplemental voir dire questions in writing and that trial judges rule on the record regarding questions requested by attorneys and any attorney participation at voir dire.

Any questions regarding this Directive or the underlying Standards may be directed to Michael F. Garrahan, Esq., of the AOC's Office of Trial Court Services by e-mail or by phone (609-292-2634).

P.S.C.

Attachments (Jury Selection Standards; Model Voir Dire Questions)

cc: Chief Justice James R. Zazzali
Assignment Judges
Criminal and Civil Presiding Judges
Theodore J. Fetter, Deputy Admin. Director
AOC Directors and Assistant Directors
Trial Court Administrators
Marilyn C. Slivka, Special Programs
Michael F. Garrahan, Jury Programs
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STANDARDS FOR JURY SELECTION

As Approved by the Supreme Court

Promulgated by Directive #21-06 (December 11, 2006)

The Supreme Court, as reflected in its September 15, 2006 Administrative Determinations on the report and recommendations of the Special Committee on Peremptory Challenges and Jury Voir Dire, approved these Standards for Jury Selection. The Special Committee developed these Standards in accordance with the Court's charge to make recommendations on ways to improve current jury selection practice. In developing the Standards, the Special Committee engaged in extensive discussions with and received input from trial judges, organized bar association groups, and individual members of the bar. The Special Committee also reviewed case law, noting, however, that in the rare instances where jury selection issues have been the subject of reported decisions, those instances have nearly always occurred in capital trials.

The purpose of jury selection is to obtain a jury that can decide the case without bias against any of the involved parties, that will evaluate the evidence with an open mind, and that will apply the law as instructed by the judge. Voir dire practices must be geared to eliciting meaningful information from prospective jurors so those with a real potential for bias can be excused. The process should be designed to provide the attorneys and judge with sufficient information to appropriately excuse jurors for cause. The process should also provide the attorneys with sufficient information to intelligently exercise peremptory challenges.

It should be noted that in many courtrooms, judges are currently conducting voir dire in a thorough and meaningful manner. However, some judges conduct the process in a more perfunctory manner, which is not properly geared to achieve the purpose of voir dire. In those courtrooms, a more expansive practice is required. The role of counsel in proposing questions and participating in the voir dire process should not be unduly restricted. Judges and counsel should be mindful that the jury selection process is an important part of the trial. Indeed, in the eyes of many attorneys, it is the most important part of the trial. Attorneys have also noted that they are more familiar than the court with the cases prior to trial and that their requests regarding voir dire should be duly considered for that reason.

Over the last decade or more, several committees and task forces have evaluated the number of peremptory challenges allowed in trials in New Jersey. Each such study made recommendations to reduce the number of challenges. Each study also has recommended that improvements be made in the voir dire process, which in turn would reduce the need for the number of peremptory

challenges currently permitted. Judicial education programs have been presented on this subject. The collective result of these efforts is that some strides have been achieved in improving the process. More, however, needs to be done, though, as noted above and which has been recognized by practicing attorneys, many judges already conduct the process in an exemplary manner.

The Special Committee developed these standards for use in all civil and non-capital criminal trials. The standards incorporate and require use of features that are reasonably suited to achieving a meaningful and thorough voir dire process. The standards, once fully implemented, will establish uniform practices, while retaining a reasonable measure of flexibility for the exercise of judicial discretion in the jury selection process. This process is a fluid one, and utilization of a rigid "script" would be counterproductive. There must be the ability for the trial judge and attorneys to deal with circumstances as they evolve during the process. Some degree of latitude to allow for variation in style is acceptable, so long as the essential ingredients of a thorough and meaningful voir dire are included.

Compliance with the standards requires accountability. Assignment Judges and Presiding Judges shall be responsible for implementing, monitoring, and assuring continued compliance with the standards.

Adherence to these standards will provide a sufficient measure of uniformity and predictability to the jury selection process throughout the State, will ensure that the process is thorough and meaningful, and will allow for reasonable flexibility and exercise of judicial discretion. The Special Committee was of the view that compliance with these standards should not add significant time to jury selection. Finally, compliance will further the interests of justice because jurors will be selected in a process that elicits sufficient meaningful information about jurors, their background, relevant views, opinions and life experiences to ensure, as best we can, that they will be able to decide the case before them in a fair and impartial manner. It will be a process that attorneys, litigants, and citizens called to jury service will recognize as sensible, serious, meaningful, and geared to its purpose -- selection of a fair jury.

The Court also asked the Special Committee for recommendations as to whether the number of peremptory challenges presently allowed should be changed. After careful consideration of the issue and much discussion and debate, the Committee recommended substantial reductions, especially in criminal trials. While the Court in its September 15, 2006 Administrative Determinations specifically did not act on that particular recommendation, instead holding it in abeyance for a year, a significant factor informing that recommendation was the anticipated improvement of the quality of the voir dire process that will be achieved by the implementation of these standards. The two work hand-in-hand. With improved and more expansive voir dire and more

liberal excusals for cause, the need for peremptory challenges should be significantly diminished.

STANDARD 1. VOIR DIRE METHOD

The method chosen to conduct voir dire must assure a thorough and meaningful inquiry into jurors' relevant attitudes so the court and counsel can identify jurors who may possess a bias, prejudice, or unfairness with regard to the trial matter or anyone involved in the trial.

Unlike some other jurisdictions, in New Jersey, the trial judge presides over and is responsible for the conduct of the jury selection process. The judge is vested with discretion in the manner in which the process is conducted. That discretion, however, is not unbridled and must be exercised in a manner that will achieve the important purpose of the process.

Our practice provides, in non-capital cases, that jurors shall be examined as follows: "For the purpose of determining whether a challenge should be interposed, the court shall interrogate the prospective jurors in the box after the required number are drawn without placing them under oath. The parties or their attorneys may supplement the court's interrogation in its discretion." R. 1:8-3(a). Two basic practices have evolved. Some judges, after calling the required number to the box, question those jurors en banc, with jurors raising their hands to respond in a particular manner as directed by the judge. Where appropriate, follow-up questions are posed to those jurors. Other judges, after calling the required number to the box, address each juror in turn, asking specific questions. Either method may be utilized, subject, however, to the following.

No method may rely on jurors' memory of questions previously posed to other jurors. Such a practice is unreliable in eliciting the required information from each juror. Each juror must be asked each question, either individually, en banc, or a combination of the two. Judges may, in their discretion, reduce the questions to written form (hand-out or easel) or projected form as an aid, but this may not serve as a substitute for orally asking each question to each juror.

Thus, for example, the originally-seated panel may be questioned en banc, with appropriate follow-up questions posed to those who respond affirmatively to particular questions. Additionally, as discussed in Standard 2, each juror who gets through the initial screening should be asked at least one or more open-ended questions intended to elicit narrative responses. These questions, of course, must be directed to and answered by each juror individually. Also, each juror should be asked individually whether there is anything about the nature of the case or the participants in the trial that would

make it difficult or impossible for that juror to judge the case fairly or impartially or whether there is anything in the juror's mind (whether or not covered by the questions) that the juror thinks the judge or attorneys ought to know about before deciding whether that juror should serve.

As jurors are excused, the newly-seated jurors must be questioned in the same manner. If, for example, three new individuals are seated at the same time, it is permissible to question those three as a group, with the same two exceptions as noted in the preceding paragraph. It is not permissible, however, as the sole basis for eliciting responses, to simply ask whether the newly-seated juror(s) heard the questions asked of previous jurors and would answer any of them differently. There is nothing wrong with posing that type of question as an initial inquiry, because it might elicit a response that results in an expeditious disqualification and thus conserve time. But if the question is utilized and does not result in disqualification, all of the questions must be posed.

The judge shall not pose the questions to the entire array, before seating the original panel in the box. The one exception to this prohibition is that for a particularly long trial, the judge may address the issue of hardship excusals to the entire array before seating the initial panel in the box. When addressing the array, the judge should inform jurors that it is important that, when called to the box, they answer all questions truthfully, accurately, and fully. The jurors should be told that if any question is of a personal or sensitive nature, they can simply ask that they discuss it with the judge (and attorneys) at sidebar.

After making the introductory comments to the array, including the remarks approved by the Supreme Court, the initial panel should be drawn and called to the box. At that point, the judge should instruct those remaining in the gallery to listen closely and carefully to the questions so that if one of them is called upon to replace an excused juror they will be able to bring to the court's attention the questions to which they would have answered yes. Then the judge should begin questioning the jurors seated in the box. As stated, under no circumstances should the questions be posed to the entire array as a substitute for asking the questions to each juror in the box, nor may the asking of each question to each juror in the box be dispensed with before that juror is qualified.

Left to the judge's discretion is the extent to which sidebar discussions are conducted. Of course, when requested by a juror because of the sensitive or personal nature of the question, sidebar should be utilized. Sidebar should also be utilized when deemed appropriate to avoid discussion of subject matter that has the capacity to taint the remainder of the panel. Generally, however, the give-and-take in the process should be conducted in open court. Challenges for cause should be conducted at sidebar if requested by counsel.

The use of written questionnaires – i.e., those answered in writing by prospective jurors – is a permitted practice but should be used only in exceptional circumstances. This practice is routinely used in capital trials, where an extremely thorough voir dire is required to evaluate death-eligibility. These trials are very lengthy and the voir dire process usually spans several weeks or months, with jurors scheduled to return for voir dire on a specific date. The judge and attorneys typically receive and review the answered questionnaires in advance to enable them to prepare for the voir dire of each juror. In non-capital criminal trials and in civil trials, the time required and administrative burdens attendant to this practice are not generally warranted. If the process is rushed, without allowing the attorneys and judge time for advance review of the answered questionnaires, the process is inefficient and ineffective. In addition, the effort involved can be made unnecessary if counsel still want to observe the jurors responding verbally to questions in order to get a better “feel” regarding the jurors. The Special Committee did not receive a widespread request for the use of this practice in routine cases. The practice should be used, in the judge’s discretion, only in substantial, complex cases that require unusually probing voir dire and only where, in relation to the overall trial, the time and administrative burden are warranted.

STANDARD 2. STANDARD QUESTIONS

When questioning prospective jurors, the judge must include the model jury selection questions approved by the Supreme Court for that type of trial, which are attached hereto.

The approved questions provide a common basis for voir dire questioning but are not intended to constitute all of the questions asked of jurors. These questions are intended as a base and are provided, at this time, for (a) all criminal trials, (b) all civil trials, and (c) additional questions for civil trials relating to (1) slip and fall cases, (2) auto cases, and (3) medical malpractice cases. Included within the model questions are inquiries of each juror whether he or she meets the juror qualifications set forth in N.J.S.A. 2B:20-1. Even though these questions are contained on the qualification questionnaire returned by prospective jurors and generally asked of jurors while in the juror assembly area, they are included here as a further safeguard to ensure that all trial jurors are fully qualified.

The model questions were developed after extensive debate and discussion, and with particular attention to the specific wording utilized. In developing the model questions, the Special Committee had the benefit of standard questions that were submitted by trial judges in response to the committee’s survey of judges’ voir dire practices.

As indicated above, judges conducting voir dire are not required to follow a rigid "script." However, while some deviation thus would not be objectionable, judges are encouraged to use the wording prescribed in the model questions. It is important that, as part of the process, each prospective juror who gets through the initial screening and appears to be potentially qualified must be asked one or more open-ended questions. Before being qualified, each juror has to be asked questions intended to have them open up and talk about such things as their background, their attitudes about the subject matter of the trial, their feelings about the court system generally, and the like. The jurors, in responding in narrative fashion to the variety of subjects presented in the question, will also provide important information by self-selecting what they choose to talk about. If a juror is not responsive, it is expected that the judge will again attempt to elicit a response to the summary question.

It is also important to ask appropriate follow-up questions where a "yes" response is given to standard questions. Intrusive questions, which unnecessarily invade the privacy interest of jurors, should be avoided.

In some civil cases, the parties may wish to expedite the voir dire process, either because the nature of the case, in their view, does not warrant an extended process, because they are near settlement, or for any other reason. These are private disputes, and, with the consent of counsel and the approval of the judge, full use of the model questions in civil trials may be waived. Of course, the waiver discussion and determination should be on the record.

STANDARD 3. SUPPLEMENTAL QUESTIONS

Counsel shall be encouraged to submit relevant supplemental questions for the court's consideration at the pre-voir dire conference; the judge shall review all proposed questions and determine whether to include each one, setting forth the determination on the record.

Supplemental questions are those not included in the model questions but relevant to the particular trial, including questions about trial issues, the parties, or other relevant issues. Supplemental questions should be submitted in writing and discussed and ruled upon at the pre-voir dire conference. R. 1:8-3(f). See also R. 4:25-7(b) (requiring in civil trials written submission of proposed voir dire questions.)

Supplemental questions should be balanced and neutral, should not be geared to "conditioning" the jury to a party's position in the case, and should not be duplicative or of limited relevance. However, it is desirable to include

supplemental questions, proposed by the parties or by the court, which will assist in selecting a fair jury.

Many judges have accumulated a stockpile of supplemental questions they ask in particular circumstances. For example, in criminal trials, judges typically have certain questions they ask in trials involving drugs, sexual assaults, instances where the defendant and victim are of different races, etc. Such supplemental questions, of course, are appropriate and should be included. Attorneys, with knowledge of the expected evidence, may be aware of issues of which the judge is not aware and which should be explored in the voir dire. This circumstance often leads to important supplemental questions. The other side of the coin is that attorneys sometimes present to the court a long list of boilerplate proposed supplemental questions, many or most of which are repetitive, of little significance or relevance to the case, etc. When presented with such proposals, judges are understandably not receptive. Attorneys should tailor their proposed supplemental questions to the case, with a view to model questions to avoid repetition, and they should keep the questions neutral and balanced.

STANDARD 4. ATTORNEY PARTICIPATION

At the discretion of the trial judge, if requested by counsel, at least some participation by counsel in the questioning of jurors should be permitted.

Since 1969, the conduct of jury voir dire, which had previously allowed extensive attorney participation, has been primarily in the hands of the trial judge. State v. Manley, 54 N.J. 259 (1969). There is no suggestion that we should revert to the pre-Manley practices or anything close to them. During the course of the Special Committee's work, there was no outcry from the bar to allow attorney participation. However, in some cases practitioners have requested at least some involvement. Rule 1:8-3(a) allows attorney participation, and Rule 1:8-3(f) requires discussion of the practice, if requested by counsel, during the pre-voir dire conference.

The admonitions of the Court in Manley are as true today as they were when that opinion was written. The undue consumption of time and the undesirable practice of juror indoctrination as consequences of attorney participation must be avoided. The judge thus should continue to exercise the primary role in questioning jurors.

The Special Committee in its report encouraged the allowance of some attorney participation if requested. But whether to allow it and, if allowed, the manner and scope of the practice must remain discretionary with the trial judge. The most common aspect of attorney participation used by some judges involves

follow-up questions. This occurs mostly at sidebar, but sometimes also in open court. When a prospective juror is called to sidebar, it is typically to discuss an issue that calls for follow-up questioning. This fluid process makes subsequent questions appropriate based upon answers given by the juror. Attorneys should be permitted, if they wish, to participate in these sidebar discussions with jurors. Typically, sidebar discussions are more conversational and much less formal than colloquy that is conducted in open court. With the court's permission, they should also be permitted limited participation in follow-up questioning in open court.

Greater restraint should be placed on requests for attorney participation in initial questioning. In this regard, all of the initial questions will have been resolved in the pre-voir dire conference, and there is no demonstrable reason why the questions would be better posed by counsel than by the judge. This remains a discretionary issue. However, the standards do not envision widespread use of attorney participation in initial questioning.

STANDARD 5. CHALLENGES FOR CAUSE

Jurors should be excused for cause, either by the court sua sponte or upon a party's request, when it appears that it will be difficult or impossible for the juror to be fair and impartial in judging the case.

The Special Committee found that in courtrooms where judges liberally grant challenges for cause, the jury selection process moves along more quickly, the use of a large number of peremptory challenges is avoided, and the parties' satisfaction with the final composition of the jury is high. While the appropriate legal standard should be applied for excusing a prospective juror for cause, liberality is encouraged. Judges should avoid extensive efforts to "rehabilitate" a juror or to reject reasons given implicitly or explicitly by the juror for not serving, recognizing that such efforts indicate that there are significant issues about that juror. When there is something particular about the juror that raises a red flag in a particular case type (e.g. a police officer in a criminal case, a nurse in a medical malpractice case, etc.), follow-up questioning should be sufficiently probative to ferret out the ability of the individual to fairly judge the case; merely asking whether, notwithstanding the apparent impediment, he or she could be fair and impartial, with a conclusory answer, is not sufficient. Jurors who express hardship problems (childcare issues, absence from work without pay, etc.) should be liberally excused, particularly where the trial is anticipated to require more than two or three days or extend into the following week.

As noted, the Special Committee recommended substantial reductions in the number of peremptory challenges allowed, especially in criminal trials. As also noted, however, the Court in its September 15, 2006 Administrative

Determinations specifically did not act on that particular recommendation, instead holding it in abeyance for a year. Presuming the Court later acts on that recommendation, with fewer peremptory challenges available, excusals for cause would become more important. There has been a practice, at least implicitly, in which judges have withheld excusals for cause where the issue is reasonably debatable, because the attorney seeking the excusal has a large number of peremptory challenges available. With the proposed reduction in the number of peremptory challenges, this practice would necessarily end. "As the defendant approaches the exhaustion of his or her peremptory challenges, the trial court should become increasingly sensitive to the possibility of prejudice from its failure to dismiss the juror for cause. That heightened sensitivity should lead to a more generous exercise of discretion as defendant approaches the exhaustion of his or her peremptory challenges." State v. Bey, 112 N.J. 123, 155 (1987). If the number of peremptory challenges eventually is reduced, judges should be more liberally disposed to excusing jurors for cause where the issue is a close one.

Trial judges are given substantial deference in their determination of the suitability of individuals to serve as jurors. This is because the judge is, in effect, making a credibility determination whenever there is a cause challenge. Obviously, if the juror says that he or she cannot judge the case fairly, the juror will be excused. It is in those cases where the jurors give the "right" answer, i.e., that they can be fair, where the judge must evaluate the reliability of that answer in light of all of the other answers the juror has given, the juror's background, and the juror's demeanor. Judges must not mechanically accept the "right answer" if it is placed in significant doubt by the other relevant circumstances.

MODEL JURY SELECTION QUESTIONS

STANDARD JURY VOIR DIRE (CRIMINAL)

When the trial will last more than a week or two, the Committee recommends that judges consider asking the hardship question (which is #2 below) before any of the substantive questions. This will allow an early excusal of jurors who will be unable to serve on a lengthy trial, thereby enabling them to become available to other courtrooms picking juries. (Otherwise, it can be asked toward the end).

1. In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be:
 - Age 18 or older
 - A citizen of the United States
 - Able to read and understand the English language.
 - A resident of _____ county (*the summoning county*)

Also, a juror must not:

- Have been convicted of any indictable offense in any state or federal court
- And must not have any physical or mental disability which would prevent the person from properly serving as a juror.

Is there any one of you who does not meet these requirements?

2.
 - a. This trial is expected to last for _____ to _____ weeks. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?
 - b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?
 - c. Is there anything that would make it difficult for you to sit, listen or deliberate for two hours without a break?
3. *Introduce the lawyers and the defendant.* Do any of you know either / any of the lawyers? Has either / any of them or anyone in their office ever represented you or brought any action against you? Do you know Mr. / Ms _____?
Name of defendant
4. *Read names of potential witnesses.* Do you know any of the potential witnesses?
5. I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?
6. Are any of you familiar with the area or address of the incident?
 - a. If yes, can you sit and decide this case based solely on the evidence admitted during the trial and the law as explained to you by the Court and not on any impression gained from prior knowledge?

7. Have you ever served on a jury before today, here in New Jersey or in any state court or federal court?

If yes: Was it a Civil or Criminal trial? When? What type of case was it? Were you a deliberating juror? Was there anything about the trial, the jury deliberation process or anything you may have learned afterward that would interfere with your ability to be fair and impartial as a juror in this trial?

8. Have you ever sat as a grand juror? When?

If the answer is yes: Do you realize that the duties as a member of a petit jury are vastly different from those of a member of a grand jury? Do you feel that your prior experience as a grand juror would in any way affect or prevent you from sitting on this jury as a fair and impartial juror?

9. Do you know anyone else in the jury box other than as a result of reporting here today?
10. Would your verdict in this case be influenced in any way by any factors other than the evidence in the courtroom, such as friendships or family relationships or the type of work you do?
11. Is there anything about the nature of the charge itself that would interfere with your impartiality?

12. Have you ever been a witness in a criminal case, regardless of whether it went to trial?
13. Have you ever testified in any court proceeding?
14. Have you ever applied for a job as a state or local police officer or with a sheriff's department or county jail or state prison?
15. Have you, or any family member or close friend, ever worked for any agency such as a police department, prosecutor's office, the FBI, the DEA, or a sheriff's department, jail or prison, either in New Jersey or elsewhere?
16. As a general proposition, do you think that a police officer is more likely, less likely, or as likely, to tell the truth than a witness who is not a police officer?
17. Would any of you give greater or lesser weight to the testimony of a police officer merely because of his or her status as a police officer?
18. Have you or any family member or close friend ever been accused of committing an offense other than a minor motor vehicle offense?
19. Have you or any family member or close friend ever been the victim of a crime, whether it was reported to law enforcement or not?
If yes, was anyone arrested? How long ago was it? Where did it occur?

Were you satisfied with the outcome?

- 20 Would you have any difficulty following the principle that the defendant on trial is presumed to be innocent and must be found not guilty of that charge unless each and every essential element of an offense charged is proved beyond a reasonable doubt?
- 21 The indictment is not evidence of guilt. It is simply a charging document. Would the fact that the defendant has been arrested and indicted, and is here in court facing these charges, cause you to have preconceived opinions on the defendant's guilt or innocence?
- 22 I have already given you the definition of reasonable doubt, and will explain it again at the end of the trial. Would any of you have any difficulty in voting not guilty if the State fails to prove the charge beyond a reasonable doubt?
- 23 If the State proves each element of the alleged offense(s) beyond a reasonable doubt, would you have any difficulty in returning a verdict of guilty?
- 24 The burden of proving each element of a crime beyond a reasonable doubt rests upon the prosecution and that burden never shifts to the defendant. The defendant in a criminal case has no obligation or duty to prove his / her innocence or offer any proof relating to his / her innocence. Would any of you have any difficulty in following these principles?
- 25, A defendant in a criminal case has the absolute right to remain silent and has the absolute right not to testify. If a defendant

chooses not to testify, the jury is prohibited from drawing any negative conclusions from that choice. The defendant is presumed innocent whether he testifies or not. Would any of you have any difficulty in following these principles?

Note: The defendant has the right to waive this question. The defendant's decision in that regard should be discussed during the voir dire conference.

26. Would you have any difficulty or reluctance in accepting the law as explained by the Court and applying it to the facts regardless of your personal beliefs about what the law should be or is?
27. Is there anything about this case, based on what I've told you that would interfere with your ability to be fair and impartial?
28. The purpose of questioning you as prospective members of the jury is to select a jury which will be fair and impartial. Is there anything, not covered by the previous questions, which would affect your ability to be a fair and impartial juror or in any way be a problem for you serving on this jury? If so, please raise your hand so that the attorneys and I can discuss it with you privately?
29. Is there anything else that you feel is important for the parties in this case to know about you?

Biographical

The following questions should be asked of each potential juror, one by one, in the jury box:

You have answered a series of questions about criminal trials and criminal charges. Now we would like to learn a little bit about each of you. Please tell us the type of work you do; whether you have ever done any type of work which is substantially different from what you do now; who else lives in your household and the type of work they do; whether you have any children living elsewhere and the type of work they do; which television shows you watch; any sources from which you learn the news, i.e. the newspapers you read or radio or TV news stations you listen to; if you have a bumper sticker that does not pertain to a political candidate, what does it say; what you do in your spare time and anything else you feel is important.

(NOTE: This question is intended to be an open-ended question which will allow and encourage the juror to speak in a narrative fashion, rather than answer the question in short phrases. For that reason, it is suggested that the judge read the question in its entirety, rather than part by part. If the juror omits a response to one or more sections, the judge should follow up by asking, in effect: "I notice you didn't mention [specify]. Can you please tell us about that?").

STANDARD JURY VOIR DIRE (CIVIL)

When the trial will last more than a week or two, the Committee recommends that judges consider asking the hardship question (which is #2 below) before any of the substantive questions. This will allow an early excusal of jurors who will be unable to serve on a lengthy trial, thereby enabling them to become available to other courtrooms picking juries. (Otherwise, it can be asked toward the end).

Note: In some civil cases, the parties may wish to expedite the voir dire process, either because the nature of the case, in their view, does not warrant an extended process, because they are near settlement, or for any other reason. These are private disputes, and, with the consent of counsel and the approval of the judge, full use of the model questions in civil trials may be waived. The waiver discussion and determination must be on the record.

1. In order to be qualified under New Jersey law to serve on a jury, a person must have certain qualifying characteristics. A juror must be:
 - Age 18 or older
 - A citizen of the United States
 - Able to read and understand the English language.
 - A resident of _____ county (*the summoning county*)

Also, a juror must not:

- Have been convicted of any indictable offense in any state or federal court
- And must not have any physical or mental disability which would prevent the person from properly serving as a juror.

Is there any one of you who does not meet these requirements?

2.
 - a. This trial is expected to last for _____ to _____ weeks. Is there anything about the length or scheduling of the trial that would interfere with your ability to serve?
 - b. Do you have any medical, personal or financial problem that would prevent you from serving on this jury?
 - c. Is there anything that would make it difficult for you to sit and listen for two hours without a break?
3. *Introduce the lawyers and the parties.* Do any of you know either / any of the lawyers? Has either / any of them or anyone in their office ever represented you or brought any action against you? Do you know Mr. / Ms _____?
Names of Parties
4. *Read names of potential witnesses.* Do you know any of the potential witnesses?
5. I have already briefly described the case. Do you know anything about this case from any source other than what I've just told you?
6. Are any of you familiar with the area or address of the incident?
If yes, can you sit and decide this case based solely on the evidence admitted during the trial and not on any impression gained from prior knowledge?
7. Have you or any family member or close personal friend ever filed a claim or a lawsuit of any kind?

8. Has anyone ever filed a claim or a lawsuit against you or a member of your family or a close friend?

9. Have you or a family member or close personal friend either currently or in the past been involved as a party ...as either a plaintiff or a defendant...in a lawsuit involving damages for personal injury?

If yes:

- (a) Were you (or did you know) the plaintiff or defendant?
- (b) How did the injury occur?
- (c) Has the case been resolved?
- (d) Were you satisfied with the outcome?
- (e) Was there anything about that experience that would prevent you from being fair and impartial in this case?
- (f) If yes, please state reasons.

10. A plaintiff is a person or corporation [or other entity] who has initiated a lawsuit.

Do you have a bias for or against a plaintiff simply because he or she has brought a lawsuit?

If the answer to Question No. 10 is affirmative, ask the following question at sidebar:

If so, what are your feelings?

11. (a) A defendant is a person or corporation [or other entity] against whom a lawsuit has been brought.

Do you have a bias for or against a defendant simply because a lawsuit has been brought against him or her?

If the answer to Question No 11 is affirmative, ask the following question at sidebar:

If so, what are your feelings?

Note: If the defendant is a corporation, the following should be asked:

(b) The defendant is a corporation. Under the law, a corporation is entitled to be treated the same as anyone else and is entitled to be treated the same as a private individual. Would any of you have any difficulty in accepting that principle?

12. The court is aware that there has been a great deal of public discussion [in print and in the media] about something called Tort Reform (laws that restrict the right to sue or limit the amount recovered). Do you have an opinion, one way or the other, on this subject?

If the answer to Question No. 12 is affirmative, ask the following question at sidebar:

If so, what are your feelings?

13. If the law and evidence warranted, would you be able to render a verdict in favor of the plaintiff or defendant regardless of any sympathy you may have for either party?
14. Based on what I have told you, is there anything about this case or the nature of the claim itself, that would interfere with your ability to be fair and impartial and to apply the law as instructed by the court?

15. Can you accept the law as explained by the Court and apply it to the facts regardless of your personal beliefs about what the law is or should be?
16. Have you ever served on a trial jury before today, here in New Jersey or in any state court or federal court?

If yes: Was it a Civil or Criminal trial? When?
Were you a deliberating juror?
Was there anything about the trial, the jury deliberation process or anything you may have learned afterward that would interfere with your ability to be fair and impartial as a juror in this trial? Did the jury reach a verdict? What was the verdict?
17. Do you know anyone else in the jury box other than as a result of reporting here today?
18. Would your verdict in this case be influenced in any way by any factors other than the evidence in the courtroom such as friendships or family relationships or the type of work you do?
19. Have you ever been a witness in a civil matter, regardless of whether it went to trial?
20. Have you ever testified in any court proceeding?
21. New Jersey law requires that a plaintiff has to prove fault of a defendant before he or she is entitled to recover money damages from that defendant. Do you have any difficulty accepting that concept?
22. If the evidence warrants awarding no money damages to the plaintiff, will you be able to return such a verdict?

23. The purpose of questioning you as prospective members of the jury is to select a jury which that will be fair and impartial. Is there anything, not covered by the previous questions, which would affect your ability to be a fair and impartial juror or in any way be a problem for you in serving on this jury? If so, please raise your hand so that the attorneys and I can discuss it with you privately.
24. Is there anything else that you feel is important for the parties in this case to know about you?

Biographical

The following questions should be asked of each potential juror, one by one, in the jury box:

You have answered a series of questions about civil trials and civil cases. Now we would like to learn a little bit about each of you. Please tell us the type of work you do; whether you have ever done any type of work which is substantially different from what you do now; who else lives in your household and the type of work they do, if any; whether you have any children living elsewhere and the type of work they do; which television shows you watch; any sources from which you learn the news, i.e. the newspapers you read or radio or TV news stations you listen to; if you have a bumper sticker that does not pertain to a political candidate, what does it say? What you do in your spare time and anything else you feel is important.

(NOTE: This question is intended to be an open-ended question which will allow and encourage the juror to speak in a narrative fashion, rather than answer the question in short phrases. For that reason, it is suggested that the judge read the question in its entirety, rather than part by part. If the juror omits a response to one or more sections, the judge should follow up by asking, in effect: "I notice you didn't mention [specify]. Can you please tell us about that?").

**STANDARD JURY VOIR DIRE
(AUTO, SLIP & FALL, MEDICAL MALPRACTICE)**

Auto

1. How many of you are licensed drivers?

2. Have you or any family member or close personal friend ever been involved in a motor vehicle accident in which an injury resulted?

What type of accident?

Injuries?

Lawsuit? Settled? Tried?

Was the resolution of the claim satisfactory?

Would it affect your ability to be fair and impartial?

3. (a) Have you or a family member or close personal friend ever been involved in litigation or filed a claim of any sort?

(b) Has anyone ever filed a claim or lawsuit against you or a family member or close personal friend?

4. Have you or a family member or close personal friend sustained an injury to the _____ or have chronic problems with _____?

5. Ask if applicable: Have you or a family member or close personal friend utilized the services of a chiropractor?

6. The Court is aware that there has been a great deal of public discussion in print and in the media about automobile accident lawsuits and automobile accident claims. Do you have an opinion, one way or the other on this subject?

If the answer to Question No. 6 is affirmative, ask the following question at sidebar:

If so, what are your opinions about automobile accident cases?

Slip and Fall

1. Is anyone a tenant?
2. Is anyone a landlord? Commercial? Residential?
3. Is anyone a homeowner?
4. Have you or a family member or close personal friend ever been involved
...as either a plaintiff or a defendant...in a slip and fall accident in which
an injury resulted?

Type of accident? Location?

Injuries?

Lawsuit? Settled? Tried?

Was the resolution of the claim satisfactory?

Would it affect your ability to be fair and impartial?

5. Have you or a family member or close personal friend ever been involved
in litigation or filed a claim of any sort?
6. Have you or a family member or close personal friend sustained an injury
to the _____ or have chronic problems with _____?

Medical Malpractice

(NOTE: It is expected that the parties will submit a few specific questions seeking juror attitudes towards particular injury claims, such as pecuniary loss for wrongful death or a claim for emotional distress, if applicable, or juror attitudes about other particular types of claims, such as wrongful birth or informed consent issues. In particular, wrongful birth claims might require a questionnaire or separate voir dire to address attitudes about termination of pregnancy.)

(*Note:* Before asking the questions below, explain that the trial involves a claim of medical negligence, which people sometimes refer to as medical malpractice and that the terms both mean the same thing.)

1. Have you, or family member, or a close personal friend, ever had any experience, either so good or so bad, with a doctor or any other health care provider, that would make it difficult for you to sit as an impartial juror in this matter?
2. If the law and the evidence warranted, could you award damages for the plaintiff even if you felt sympathy for the doctor?
3. Regardless of plaintiff's present condition, if the law and evidence warranted, could you render a verdict in favor of the defendant despite being sympathetic to the plaintiff?
4. Have you, any family member, or close personal friend ever worked for:
Attorneys
Doctors, Hospitals or Physical Therapists
Any type of health care provider

Any ambulance / EMT / Rescue

5. Have you, or any members of your family, been employed in processing, investigating or handling any type of medical or personal injury claims?

If so, please describe:

6. (a) Is there anything that you may have read in the print media or seen on television or heard on the radio about medical negligence cases or caps or limits on jury verdicts or awards that would prevent you from deciding this case fairly and impartially on the facts presented?

If the answer to Question No. 6 is affirmative, ask the following question at sidebar:

- (b) If so, what did you hear or read?
- (c) Did the news coverage affect your thinking about medical malpractice cases in any way?
- (d) How?
7. This case involves a claim against the defendant for injuries suffered by the plaintiff as a result of alleged medical negligence. Do you have any existing opinions or strong feelings one way or another about such cases?

If the answer to Question No. 7 is affirmative, ask the following question at sidebar:

If so, what are your opinions?

8. Have any of you or members of your immediate family ever suffered any complications from [specify the medical field involved]?
- 9 Do you have any familiarity with [specify the type of medical condition involved] or any familiarity with the types of treatment available?
10. Are you, or have you ever been, related (by blood or marriage) to anyone affiliated with the health care field?

If so, please describe:

11. Have you or any relative or close personal friend ever had a dispute with respect to a health care issue of any kind with a doctor, chiropractor, dentist, nurse, hospital employee, technician or other person employed in the health care field?
12. Have you or any relative or close personal friend ever brought a claim against a doctor, chiropractor, dentist, nurse or hospital for an injury allegedly caused by a doctor, dentist, nurse or hospital?
13. Have you or any relative or close personal friend ever considered bringing a medical or dental negligence action but did not do so?
14. Have you or any relative or close personal friend ever been involved with treatment which did not produce the desired outcome?