

## Practice Standards

December, 2012

### Section VI, Qualifications and Duties of Counsel

#### 17. Jury Selection:

##### A. Preparing for Voir Dire:

- a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.
- b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.
- c. Prior to jury selection, counsel should obtain a prospective juror list, and the standard jury questionnaires. Counsel should also consider requesting use of a separate questionnaire that is tailored to the client's case.
- d. Counsel should develop *voir dire* questions in advance of trial and tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case. Among the purposes *voir dire* questions should be designed to serve are the following:
  - i. to elicit information about the attitudes of individual jurors, which will inform counsel and client about peremptory strikes and challenges for cause;
  - ii. to convey to the panel certain legal principles which are critical to the client's case;
  - iii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;
  - iv. to present the client and his or her case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and,
  - v. to establish a relationship with the jury.
- e. Counsel should be familiar with the law concerning mandatory and discretionary *voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.
- f. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.
- g. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

##### B. Examination of the Prospective Jurors:

- a. Counsel should personally *voir dire* the panel.
- b. Counsel should take all steps necessary to protect the *voir dire* record for appeal, including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

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- c. If the *voir dire* questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and that the court, rather than counsel, conduct the *voir dire* as to those sensitive questions.
  - d. In a group *voir dire*, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.
- C. Challenging the Jurors for Cause:  
Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.