

Jury Selection

Voir Dire Mechanics

Voir Dire should be conducted to assist you in making well-grounded challenges for cause and allow you to identify less suitable jurors subject to peremptory challenges. The rules regarding juror challenges can be found in the *Code of Civil Procedure* §§ 225-231.

In a criminal trial, “[e]xamination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.” *CCP § 223*. Challenges for cause can be made by either side for either *implied bias* or *actual bias* *CCP §225(b)*. The ultimate determination to excuse a juror for cause is made by the court. *CCP §230*. “The trial court’s exercise of its discretion in the manner in which voir dire is conducted, including any limitation on the time which will be allowed for direct questioning of prospective jurors by counsel and any determination that a question is not in aid of the exercise of challenges for cause, shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section 13 of Article VI of the California Constitution.” *CCP § 223*.

There are eight categories of implied bias listed in *CCP §229*:

- 1) Consanguinity or affinity with party or victim;
- 2) Relationship;
- 3) Prior service in same matter;
- 4) Interest in the action;
- 5) Unqualified opinion or belief as to the merits of the action founded by knowledge of material facts or some of them;
- 6) Enmity or bias towards or against a party;
- 7) Party to an action before same jury; and
- 8) Opposition to death penalty in capital case.

Actual bias is defined as “*the existence of a state of mind on the part of the juror in reference to the case, or to any of the parties, which will prevent the juror from acting with entire impartiality, and without prejudice to the substantial rights of any party.*” *CCP§225(b)(1)(C)*.

No peace officer, as defined in Section 830.1, subdivision (a-c) of Section 830.2, and subdivisions (a) of Section 830.33, of the Penal Code, shall be selected for voir dire in a criminal matter. *CCP § 219*.

Number of Challenges

There is no limitation on the number of challenges for cause, however, the trial court does not have sua sponte duty to excuse biased jurors when counsel has failed to exercise a peremptory challenge for that purpose. *People v. Bolin* (1998) 18 Cal.4th 297.

The number of peremptory challenges depends upon the possible sentence of the offense charged and the number of defendants. If the offense is punishable with *maximum term of imprisonment of 90 days or less*, each side gets 6 peremptory challenges. CCP §231

If the offense is punishable with *death or with imprisonment in the state prison for life*, each side gets 20 peremptory challenges. CCP §231(a). In *all other cases* each side gets 10 peremptory challenges.

In multiple defendant cases with sentences under 90 days, the People get 6 challenges and the defendants get *6 challenges jointly*. Each defendant is additionally entitled to *4 separate challenges*. The People get as many challenges as are allowed all defendants. CCP §231(b) In life in prison and death cases – The People get 20 challenges and the defendants get *20 challenges jointly*. Each defendant is additionally entitled to *5 separate challenges*. The People get as many challenges as are allowed all defendants. CCP §231(a)

In all other cases, the People get 10 challenges and the defendants get *10 challenges jointly*. Each defendant is additionally entitled to *5 separate challenges*. The People get as many challenges as are allowed all defendants. CCP §231(a)

The selection of Alternate jurors is governed by CCP §234. Challenges are allotted as follows: In a single defendant case, there is one challenge for each side per the number of alternates. In a multiple defendant case, each defendant gets one challenge per number of alternates and the People get the same total number as the defense team.

Proper Subject Matter For Attorney Inquiry

It is improper to ask questions intended solely to educate the jury, compel the jurors to commit to vote a certain way, prejudice the jury, argue the case, indoctrinate the jury, instruct the jury on the law, or test the juror's knowledge of the law. *People v. Edwards* (1912) 163 Cal. 752; *People v. Williams* (1981) 29 Cal.3d 392, 408; *People v. Ashmus* (1991) 54 Cal.3d 932, 959.

It is permissible to ask a juror about his attitude about a particular rule of law only if (1) the rule is relevant or material to the case, and (2) the rule appears to be controversial; e.g., the juror has indicated some hostility toward the rule, or it is commonly known the community harbors strong feelings about it. *People v. Balderas* (1985) 41 Cal.3d 144, 185; *People v. Williams* (1981) 29 Cal.3d 392, 408.

It is improper to use voir dire questions for the sole purpose of argument by counsel. *People*

v. Mitchell, 61 Cal 2d 353, 366.

A trial judge's refusal to permit any voir dire questions concerning racial bias or prejudice may require reversal. *People v. Wilborn* (1999) 70 Cal.App.4th 339. In a case involving an interracial killing, a trial court during general voir dire is required to question prospective jurors about racial bias on request. *People v. Bolden* (2002) 29 Cal.4th 515. Expect to see broadening of this area of inquiry in response to current events and opposing views on race and policing.

“Any question whose sole purpose is ‘... to attempt to precondition the prospective jurors to a particular result’ should be excluded.” Similarly, “any question whose sole purpose is “... to attempt to precondition the prospective jurors to a particular result” should be excluded. [CRC Standards of Jud. Admin., Standard 3.25(f)] *Scope of Permissible Voir Dire—Proper vs. Improper Questions*, Cal. Prac. Guide Civ. Trials & Ev. Ch. 5-G

Examples of Permissible Questions

Asking jurors whether they would be able to vote guilty if, after deliberations, they were persuaded that the changes had been proved beyond a reasonable doubt. *People v. Fierro* (1991) 1 Cal.4th 173, 209)

“[I]f I prove beyond a reasonable doubt each and every element of each of the offenses charged . . . can you assure me that you would be willing to return a verdict of guilty even though you have unanswered questions?” *People v. Riel* (2000) 22 Cal.4th 1153, 1178 fn. 4.

In order to avoid a hung jury the prosecutor observed that each juror must “come to your own conclusion,” but also stressed the value of “work[ing] together to try to discover the truth.” *People v. Fierro* (1991) 1 Cal.4th 173, 210, fn 8.

Prosecutor's “hypothetical” voir dire illustrations of aggravating and mitigating factors were permissible in capital murder prosecution, even though the prosecutor used examples of aggravating factors closely resembling the facts of the case and used examples of mitigating factors unlike the defendant's mitigating evidence. *People v. Seaton* (2001) 26 Cal.4th 598.

In questioning a juror, the prosecutor asked her if she believed a person charged with committing a crime such as defendant’s must be insane. The prosecutor also asked: Do you feel there could be such a thing as a person who is legally insane? *People v. Fields* (1983) 35 Cal.3d 329, 358.

Whether a juror would view a person’s possession of recently stolen property as circumstantial evidence that the person stole the property. (*People v. Mendoza* (2000) 24 Cal.4th 130, 167.)

Whether a juror considered rape more of an assaultive than a sexually motivated offense, and whether they thought it was possible for a young man to rape an elderly woman and not be mentally ill. (*People v. Mendoza* (2000) 24 Cal.4th 130, 167.)

While counsel may ask prospective jurors if they are able to return a verdict in if supported by the evidence, it is not proper to ask for their commitment to do so. *Scope of Permissible Voir Dire—Proper vs. Improper Questions*, Cal. Prac. Guide Civ. Trials & Ev. Ch. 5-G.

Examples of Impermissible Questions

“I had a case a few years ago where three teenage girls were killed in Huntington Beach and [it was a] very emotional case. It was about a three week long trial, very strong evidence against the defendant. At the end of the trial the jury went out and the families were there every single day, the families of [the] three girls and they sat there. The jury didn't come back the first day and the families started getting very upset and crying, you know. They would [ask] me what is wrong, why, how come they didn't make a decision. I don't know. Next day came back same thing, the families are all upset—[¶] ... [¶] ... The jurors came back and we asked them why—what took so long. Oh, we knew he was guilty the first day, but we wanted to figure out this one other issue.... [¶] ... [¶] ... My question is would any of—if you had other questions but they didn't go to the elements, the actual like 1, 2, 3 elements, if you were convinced beyond a reasonable doubt of the elements, even though you might have some question very interesting, but didn't go to that element [,] would you be able to convict?” *People v. Castillo* (2008) 168 Cal.App.4th 364, 380. This contextual question inserted information clearly designed to evoke sympathy for the victims in the case.

“If any of you (prospective jurors) find a question particularly embarrassing, and you would prefer to answer in the judge's chambers rather than here in open court, please let me know and I will be glad to ask the judge to allow you to do so.” *Scope of Permissible Voir Dire—Proper vs. Improper Questions*, Cal. Prac. Guide Civ. Trials & Ev. Ch. 5-G. This is an impermissible form of questioning because it is used to “curry favor” since you are the hero. The admonition may be proper if the directive is simply to advise the court if you wish to answer in private.

“Do you agree then that a killing done intentionally should be treated more strongly or more severely than a killing that is accidentally done or unintentionally done?” *People v. Mitchell*, 61 Cal 2d 353, 366.

“Are you sure you haven't seen my client's picture in the paper as coach of the championship Little League baseball team from St. Luke's Church?” *Scope of Permissible Voir Dire—Proper vs. Improper Questions*, Cal. Prac. Guide Civ. Trials & Ev. Ch. 5-G.

Do you believe in self-defense in the home? (Not controversial; *People v. Williams* (1981)

29 Cal.3d 392, 411.)

“Whether, if they believed that a witness was an informant and was testifying ‘in exchange for some lesser sentence,’ then that ‘would have some bearing on the weight or credibility that that witness may have in your mind?’ ” *People v. Mason* (1991) 52 Cal.3d 909, 940.

In a death penalty case, the court did not “allow either party to discuss the law – such as the meaning of diminished capacity – or ask questions that required the prospective jurors to pre-try the facts of the case.” *People v. Rich* (1988) 45 Cal.3d 1036, 1104.

Defense counsel was not permitted to question prospective jurors regarding their ability to view accomplice testimony with suspicion and distrust. *People v. Johnson* (1989) 47 Cal.3d 1194, 1224.

In an eyewitness case where the defense expected to call an ID expert, the defense was prohibited from eliciting opinions of potential jurors concerning the effects of stress on perception. *People v. Sanders* (1990) 51 Cal.3d 471, 506.

Defense counsel stated, “It’s clear a girlfriend has an interest to lie. I just want to make sure that the jurors don’t automatically, before they hear her testimony, say she’s lying because she’s the girlfriend.” The trial court barred this line of questioning on the ground that the defendant was trying to educate the jurors and induce them to prejudge the evidence. We cannot say that the court abused its discretion in doing so. *People v. Helton* (1984) 162 Cal.App.3d 1141, 1145.

“What do you feel is a proper punishment for someone who has committed a rape or other serious sexually related crime?” *People v. Ochoa* (1998) 19 Cal.4th 353, 444.

Many detailed questions regarding personal experience with sexual molestation in a child molestation-murder case. *People v. Earp* (1999) 20 Cal.4th 826, 851, fn 1.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE
COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

(DEFENDANT'S NAME),

Defendant.

Court No. CDXXXXXX
DA No.: (DA Case Number)

DIVERSION CONDITIONS

The pre-preliminary hearing offer at the readiness conference is diversion as follows:

- 1) **50 hours** volunteer work with a non-profit organization;
- 2) **\$(restitution amount)** restitution to (Victim),
Claim number: XXXXXX;
- 3) **\$(additional restitution)** restitution to (Additional Victims)
- 4) **\$500.00** to the CDI Statewide Auto Insurance Anti-Fraud Fund

All payments must be made via Cashier's Checks or Money Orders with claim numbers noted in the Memo lines. Volunteer Work Service must be with a not for profit entity.

If, after 6 months the Defendants have satisfied all the above conditions, and has remained law abiding with no new criminal cases, this matter will be dismissed in the interest of justice.

DATED:

(DDA's Name)
Deputy DA

Attorney for Defendant

(Defendant's Name)
Defendant, DOB __/__/__

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

DEFENDANT,

Defendant.

No.

DIVERSION CONDITIONS

The offer at the _____, **2022** readiness hearing is diversion as follows:

- **Obtain a valid contractor's license;**
- **Maintenance of proper workers' compensation insurance coverage for all employees for a period of 12 consecutive months;**
- **EDD Training Class;**
- **Full payment of restitution to (VICTIM) in the amount of \$_____ (an amount to be determined.)**

If, after 12 months, **DEFENDANT** has satisfied all of the above conditions and has remained law abiding with no new criminal cases, **DEFENDANT** may plead guilty to an infraction with a dismissal of all other charges in the interest of justice. All payments must be made via Cashier's Checks or Money Orders with claim numbers noted in the Memo lines.

DATED: Month Day, Year

XXXXXXXXXX
Deputy District Attorney y

DEFENSE ATTY, Esq.
Attorney for Defendant

DEFENDANT
DOB: