

IMPLEMENTING NEW YORK'S CIVIL VOIR DIRE LAW AND RULES



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Message from the Chief Administrative Judge

As part of our continuing efforts to improve the jury system, we have prepared this guide to implementing New York law and rules for jury selection in civil trials. The purpose of this booklet is to provide an overview of the many legal and administrative requirements governing procedures for civil voir dire, including judicial supervision, selection methodologies, questioning of jurors and juror challenges. In addition, this booklet sets forth recommended approaches or “best practices” for ensuring that jury selection is conducted in a fair and efficient manner that balances the needs of courts, jurors and counsel. It is aimed both at achieving consistency in the implementation of applicable rules and honoring regional differences in practice.

For the last fifteen years, New York’s judges and lawyers have led the nation in implementing reforms to enhance the effectiveness and fairness of our jury system. This booklet seeks to build on this outstanding partnership. I encourage you to visit us at www.nycourts.gov/ to obtain additional copies of this guide and to learn more about New York’s jury improvement efforts.

Hon. Ann Pfau
Chief Administrative Judge
January 12, 2009

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I. Introduction and Overview

The purpose of this booklet is to assist courts and counsel in properly implementing New York State law and rules governing civil voir dire, which are set forth in Civil Practice Law and Rules Article 41 ([Sections 4101- 4113](#)) and the Uniform Rules for the New York State Trial Courts ([Section 202.33](#)).¹

Should questions arise regarding implementation of the procedures set forth in this booklet, or if the procedures are not being followed, please contact the New York Juror Hotline (1-800-NYJUROR). Calls to the hotline will be screened by management personnel in the Unified Court System's Central Jury Support Office and referred to the Office of the Chief Administrative Judge as appropriate.

In most civil trials, voir dire generally is conducted by counsel outside the immediate presence of the assigned trial judge, though the judge retains discretion to remain present during any or all parts of the process.² In many counties, voir dire is conducted in the assigned trial judge's courtroom after a meeting with counsel, with the judge often presiding over the beginning of voir dire and then leaving the room to perform other duties.

In some counties, the task of supervising voir dire is delegated to a Judicial Hearing Officer (JHO),³ though counsel for either side may request that a judge be present during voir dire.⁴ Counties where voir dire usually is supervised by JHOs are: Bronx, Erie, Kings, New York, Richmond, Queens, and Westchester.

In these counties, if the assigned trial judge does not supervise voir dire, or no trial judge has yet been assigned to the case, a JHO will supervise voir dire. The parties may consent to rulings by a JHO during voir dire.⁵ Counsel are entitled to appeal a JHO's ruling to a judge who must hear and rule on challenges for cause.⁶ Counsel always have the opportunity to contemporaneously appeal a JHO's ruling to a judge and to make a record.

Nonjudicial personnel are responsible for many important logistical and administrative tasks related to voir dire, including assuring juror comfort and convenience. They are not charged with supervising voir dire. The role of nonjudicial personnel in connection with civil voir dire is described in Section IV below.

¹ Citations and references that are underlined are hyperlinked in the online version of this booklet. www.nycourts.gov/publications.

² Rules of the Trial Courts, [section 202.33](#).

³ Judicial Hearing Officers derive authority to supervise voir dire under [CPLR 4001](#).

⁴ [CPLR R4107](#).

⁵ [CPLR 4317](#).

⁶ [CPLR 4108](#).

II. Working with jurors

Depending on local practice, a judge or JHO may interact with jurors in two settings: greeting them in the jury assembly room when they start their service,⁷ and introducing them to the voir dire process when they have been empaneled for an individual case. See [Appendix A](#) for suggested language covering both situations.

Whoever speaks to the jury panel at the beginning of jury selection – judge, JHO, or counsel – should follow certain general principles designed to get voir dire off to a good start.

- A. **Get the jurors interested in the process.** Assure them that jury service is a meaningful, productive and satisfying experience.
- B. **Thank the jurors.** Acknowledge that their service is valuable and important, whether or not they are ultimately seated on a jury.
- C. **Assure jurors that their privacy will be protected.** Jurors who wish to do so may answer questions in private. Juror questionnaires will be returned to jurors or destroyed after voir dire if they are not seated.
- D. **Describe the case to jurors at the outset.** The trial judge or JHO may briefly describe the case for jurors – based on either a written statement or oral summary provided by counsel. Whether or not the case has been described by a judge or JHO, each counsel should be encouraged to make a brief voir dire opening statement (3 - 5 minutes for each side) summarizing the case from their side's point of view as recommended by the [Jury Trial Project](#). The Jury Trial Project's recommendation is included here as [Appendix C](#). If jurors are provided with basic information about the case, they will be better prepared to answer questions in a meaningful manner.
- E. **Explain the role of the judge or JHO.** Inform jurors that even though the judge or JHO may not be present during questioning, he or she remains responsible for ensuring a smooth, efficient process and is available to hear from counsel or individual jurors as needed.

⁷ Rules of the Chief Administrative Judge, [section 128.11](#).

III. What does judicial supervision of civil voir dire involve?

Judicial supervision of voir dire involves three general areas: discussing voir dire procedures with counsel; hearing and resolving arguments concerning challenges for cause; and, monitoring the overall progress of voir dire.

A. Discussing with counsel the voir dire process and procedures

- 1. Who will introduce the case to the jurors?** Some judges or JHOs introduce themselves, counsel and the case to the jurors; others rely on the attorneys to make all introductions.
- 2. Logistics of jury selection.** Topics to address with counsel include:
 - expected length of trial
 - anticipated time needed to select a jury
 - method of selection
 - size of jury panel (number of jurors needed for questioning)
 - number of alternates, and whether alternates will be non-designated
 - issues to cover during the general voir dire for cause, and
 - who will ask general cause questions (judge, JHO or counsel?).

B. Being readily available to hear challenges for cause. When the trial judge supervises voir dire the judge remains available to hear challenges for cause. When there is no trial judge available to supervise voir dire, JHOs may, with consent of counsel, hear and rule on challenges for cause, subject to final ruling by a judge. A JHO may question a challenged juror but may not rehabilitate that juror by eliciting a promise to be fair, to follow the judge's instructions or to be unbiased. Generally, JHOs should err on the side of caution and excuse jurors when there is a possibility of bias. Objections to a JHO's ruling are to be heard by a judge prior to resumption of voir dire, and, if requested by counsel, such objection will be contemporaneously placed on the record. The judge hearing objections may be the assigned trial judge, or any other designated judge depending on local practice. In no event will appeal of a JHO's ruling be heard by another JHO.

C. Checking with counsel on the progress of voir dire. The judge or JHO will consult with counsel concerning the anticipated time needed to complete jury selection. Instead of setting time limits for questioning, the recommended practice is for the judge or JHO, based on the consultation, to set only a general

time period after which counsel should report on the progress of voir dire.⁸ In a routine case a reasonable time period to report on the progress of voir dire is after about two or three hours of actual voir dire and, if requested by the judge or JHO, periodically thereafter until jury selection is completed. In determining whether a case is routine, relevant factors to consider include case complexity, anticipated length of trial, pretrial publicity or the presence of unusual, emotionally charged or controversial issues. Counsel will be permitted to ask voir dire questions about jurors' attitudes on those topics.

IV. The role of court and commissioner of jurors staff

Nonjudicial personnel assist the court, counsel, and jurors during jury selection. Sometimes the assigned trial judge asks nonjudicial personnel to act on the judge's behalf in monitoring voir dire.

Commissioner of Jurors staff qualify, postpone and excuse jurors. They assure that there are enough jurors for voir dire, and randomly select each panel of jurors sent to the empaneling room or court room for voir dire. They also monitor and protect jurors' comfort and convenience.

Commissioner of Jurors and/or court staff also fulfill other duties:

- distribute and collect juror background questionnaires, make copies available to counsel and ensure that jurors' questionnaires are returned to the jurors or destroyed when no longer needed for voir dire;
- facilitate communication between counsel and the assigned trial judge or JHO as needed;
- administer oaths prior to voir dire and after jurors are selected;
- assure that all court forms are properly completed;

Commissioner of Jurors and/or court staff do not: impose or enforce time limits, decide what method of jury selection will be used, hear arguments regarding cause challenges or require that counsel exercise challenges in their presence (except if ordered by the assigned trial judge).

⁸ The rules provide three options: "At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of Panels of jurors or individual jurors." [Section 202.33\(d\)](#).

V. Selecting the jury

Jury selection begins with the seating in a courtroom or empaneling room of a panel of jurors randomly selected by the Commissioner of Jurors. The average size of a civil jury panel is 28. Most courts begin civil jury selection with an initial panel of anywhere from 20 to 34 jurors, depending on the nature and complexity of the case. In some courts, the size of the panel is constrained by space availability.⁹

A. Number of jurors and alternates

Generally, eight jurors are seated (six jurors and two alternates).¹⁰ The court may permit a greater number of alternates as needed. Non-designated alternates may be used with consent of the parties.¹¹ Under this approach, no distinction is made between “jurors” and “alternates” until deliberations, at which time six jurors are randomly selected to deliberate and decide the case. Some judges use “undisclosed alternates:” the judge and the parties know which jurors are alternates, but the alternates are not so informed until the trial’s conclusion.

B. General questions for cause

Questioning begins with general questions to the prospective jurors as a group to determine whether any member of the panel has knowledge of the subject matter, the parties, the attorneys or prospective witnesses. These initial general questions may be posed by counsel or by the judge or, upon request of counsel, by the JHO. As a result of responses to these general questions, some prospective jurors may immediately be questioned individually and out of the presence of other jurors. Challenges for cause or consent excusal of jurors anywhere in the panel may occur after these general questions are asked.¹² As needed, counsel may question members of the panel individually and out of the presence of the other jurors.

⁹ In 1990 the Chief Administrator of the Courts announced Voir Dire Panel Size Guidelines. For civil cases the initial maximum panel size was set at 20 and with a supplemental panel multiple set at 4. The memo is available to court personnel on the UCS Intranet.

¹⁰ CPLR [§4104](#) (Jury) and [§4106](#) (alternates).

¹¹ Trial Court. Rules [§220.1](#).

¹² The parties may stipulate to excuse a juror. [CPLR 4108](#)

C. Challenges

1. **Consent of parties.** “An objection to the qualifications of a juror must be made by a challenge unless the parties stipulate to excuse him.”¹³ Unlike peremptory challenges, there is no limit on the number of jurors that may be excused by counsel on consent.
2. **Peremptory challenges**
 - a. **Number.** Plaintiffs collectively have three peremptory challenges plus one peremptory challenge for each two alternates. Defendants collectively (other than third party defendants) also have three peremptory challenges plus one for each two alternates.¹⁴
 - b. **Additional.** The court, before the examining of jurors, may grant an equal number of additional peremptory challenges to both sides. Where a side has two or more parties, the court may allocate that side’s total peremptory challenges among those parties.¹⁵
 - c. **Exercise.** Peremptory challenges are exercised outside the presence of the panel, or against a list or ballot, so that jurors remain unaware of which side is excusing which jurors.¹⁶ Exercise of peremptory challenges alternates one at a time between the parties.
3. **Challenges for cause.** The court must hear and decide whether to grant or deny challenges for cause.¹⁷ The judge, or a JHO where counsel have consented, has broad discretion to excuse a juror whom the judge or JHO concludes is unable to fulfill the duties of a juror.¹⁸

¹³ [CPLR 4108](#).

¹⁴ [CPLR 4109](#).

¹⁵ [CPLR 4109](#).

¹⁶ [Section 202.33](#), Appendix E(A)(5).

¹⁷ [CPLR 4108](#).

¹⁸ Statutory grounds for a challenge for cause include but are not limited to that a juror is: an employee or stockholder of a corporate party; a stockholder, director, officer, or employee or has an interest in any liability insurance carrier; or related to a party within sixth degree of consanguinity. [CPLR 4110](#).

4. **Making objections.** Objections should be made as unobtrusively as possible.¹⁹ Similarly, challenges for cause should be unobtrusively made. Counsel should make every effort to settle disputes without court assistance. If such efforts fail, counsel shall bring the dispute to the attention of the assigned trial judge or JHO.

D. Method of selection

The Uniform Rules for the Trial Courts provide for two methods of jury selection – White’s or Struck.²⁰ Counsel shall be given the opportunity to select the method they prefer, provided that the court will select the method if the parties cannot agree.²¹ Each county must adopt a default method to be used when the parties cannot agree and no judge or JHO is available to select the method. Regardless of which method is used, questioning of prospective jurors is conducted first by counsel for the plaintiff(s) and then by counsel for the defendant(s). In each round, the exercise of challenges always alternates between the parties, with each party exercising one challenge at a time.

1. White’s

After the general questions to the full panel, counsel questions jurors in rounds. The jurors being questioned are characterized as being “in the box.” Although in some counties the number of jurors questioned in round one is greater than six, the preferred practice is to question six jurors as set forth in Appendix E of Section 202.33 of the Uniform Rules for the Trial Courts.²²

In each round, consent excusals and challenges for cause of jurors ‘in the box’ shall be exercised prior to exercise of peremptory challenges and as soon as the reason therefor becomes apparent. When a juror is removed from the box for cause or on consent, that juror is immediately replaced, and questioning reverts to counsel for the plaintiff.

¹⁹ [Section 202.33](#), Appendix E(A)(8).

²⁰ Strike and replace or other methods may be used if approved by the Chief Administrative Judge.

²¹ The rules authorize the judge to direct the method of selection to be used. [Section 202.33 \(c\)](#).

²² Where counsel have consented to non-designated alternates, [Section 220.1](#), the number in the box in the first round includes the equivalent number of alternates..

Once there are six²³ “cause-free”²⁴ jurors in the box, peremptory challenges shall be exercised.²⁵ In the first round peremptory challenges are exercised in the order in which the parties are listed in the case caption. In subsequent rounds, the first exercise of peremptory challenges alternates from side to side. In each round, peremptory challenges are exercised one at a time by removing a juror’s name from a list or ballot from a board that is passed back and forth until no other peremptory challenges are exercised. Once a party waives a challenge, that party may not thereafter exercise another peremptory challenge in that round.

Jurors remaining ‘in the box’ after exercise of consent, cause and peremptory challenges are sworn and excused. They may be excused from court and told to return when the trial itself is expected to begin. If all jurors needed for the jury (or the jury plus alternates) have not been sworn after the first round, subsequent rounds are conducted until the full jury is selected and sworn. If alternates are designated, a separate round may be conducted to seat alternates.

For the second round, an effective approach is to place “in the box” a number of jurors equal to the number of unfilled juror seats plus the number of peremptory challenges remaining. With a six-person jury, the number of seats remaining to be filled and challenges remaining to be exercised will almost always be six.²⁶ With an eight-person jury (non-designated alternates) the number will almost always be eight.

If a panel is exhausted before jury selection is completed, an effective approach to determining the size of a new panel is to multiply by three or four the number of jurors and/or alternates yet to be selected.

2. Struck

The basic principle of the “Struck method” is that there is only one round of peremptory challenges exercised. Indeed, no peremptory challenges are exercised until the full number of persons needed for the jury, alternates and peremptory challenges – generally 16 – have survived all consent and cause challenges. It is

²³ Plus a number equivalent to the number of alternate jurors where non-designated alternates are used.

²⁴ The phrase “cause-free” refers to those jurors who have been questioned and not excused for cause or by consent.

²⁵ If in any round there are fewer “cause-free” jurors “in the box” than there are jurors remaining to be selected and the panel of jurors has been exhausted, counsel may consent to exercise peremptory challenges before bringing in a new panel of jurors.

²⁶ The number of jurors needed in the box will be greater than six if, by consent, counsel exercised in the first round peremptory challenges against fewer than six jurors.

necessary to have 16 ‘cause-free’ jurors in order to account for a six-person jury, three peremptory challenges for each side, two alternate jurors and one peremptory challenge for each side for the alternates.

After the general voir dire of the full panel, counsel’s questions focus on the first 16 prospective jurors in the randomly selected panel. If any prospective jurors are excused by consent or cause challenge after both sides have questioned the first 16, the questioning proceeds with the prospective jurors occupying seats 17 and higher until there is a total of 16 ‘cause-free’ jurors. For example, if four jurors are excused for cause or by consent, then the prospective jurors sitting in seats 17 through 20 are questioned. If one of those four is also excused, then the juror seated in seat 21 is questioned, and so forth.

Once the necessary number of “cause-free” jurors has been identified, counsel may exercise peremptory challenges one at a time by removing a juror’s name from a list or ballot from a board that is passed back and forth between the parties. Where there is more than one party on either side, peremptory challenges are exercised by the parties in the order in which their names appear in the case caption.²⁷ Exercise of peremptory challenges continues until either all peremptory challenges are exhausted or both sides waive their challenges. The first six jurors remaining on the list or on the board are the jury and the next two are the alternates. If alternates are non-designated, then the first eight jurors become the jury.

VI. Conducting the voir dire

A. Juror questionnaires

In every county, the Commissioner of Jurors provides a standard background questionnaire (UCS-140) to be completed by all prospective jurors and used by counsel as a tool to facilitate voir dire.²⁸ A copy of the questionnaire is included here as [Appendix B](#). The questionnaire has an original and three copies, allowing one copy each to be used by the judge, plaintiff(s) and defendant(s) and the juror. Counsel should be afforded adequate time to review the questionnaires. After voir dire questioning is completed, the questionnaire copies belonging to those jurors who are not seated must be returned to the jurors or destroyed by the court. With the court’s approval, the parties may use an additional questionnaire that addresses concerns unique to a specific case.

²⁷ “Unless following that order would, in the opinion of the court, unduly favor a side.” [Section 202.33](#), Appendix E(C)(5).

²⁸ [Section 202.33](#), Appendix E(A)(3).

B. Introductions

All parties, attorneys and witnesses should be introduced to the jury panel, either in person or by reading a list of names (with identifying information) to the panel.²⁹ Introductions may be made by the judge, JHO, or by counsel.

C. Description of the case

The trial judge or JHO may briefly describe the case for jurors – based on either a written statement or oral summary provided by counsel. Whether or not the case has been described by a judge or JHO, counsel should be encouraged to make a brief voir dire opening statement (3 - 5 minutes for each side) summarizing the case from their respective viewpoints.³⁰

D. Juror qualifications

The Commissioner of Jurors qualifies jurors.³¹ Because some jurors are not completely forthcoming in juror questionnaires or during re-screening in the jury assembly room, qualification questions are generally asked again during voir dire. A person is qualified to serve as a juror under the Judiciary Law,³² if he or she is:

- A citizen of the United States, and a resident of the county;
- at least eighteen years of age;
- has not have been convicted of a felony; and,
- is able to understand and communicate in the English language.³³

In addition, anyone who has previously served as a juror in any state or federal court in New York is not eligible for service in the New York State courts for six years from the conclusion of the previous service.³⁴

²⁹ [Section 202.33](#), Appendix E(A)(4).

³⁰ A brief voir dire opening by each party is recommended by the [Jury Trial Project](#). See [Appendix C](#) for the Jury Trial Project's recommendation.

³¹ Judiciary Law [Section 509](#).

³² [Section 510](#).

³³ Guidelines for Assessing Potential Jurors' Ability to Understand and Communicate in the English Language instruct commissioners to leave such decisions to a judge whenever a juror's language abilities are unclear. The guidelines are reproduced here as [Appendix D](#).

³⁴ Judiciary Law [Section 524](#).

E. Length of trial

Court rules allow counsel to advise jurors “if an unusual delay or a lengthy trial is anticipated.”³⁵ At counsel’s request, jurors may be informed of the expected length of the trial to avoid seating any juror who will not be available for the full length of trial.

F. Other topics to cover

Counsel may state their clients’ contentions and identify the parties, attorneys and witnesses likely to be called. Other relevant topics may be covered by counsel in voir dire, including discussion of injuries and damages in bifurcated trials. Counsel may not read from pleadings or inform jurors about monetary sums at issue and should avoid explaining legal concepts which are the province of the court.³⁶ Nothing in this booklet shall preclude the judge or JHO from curtailing argumentative or otherwise improper examination.

G. Questioning out of the presence of other jurors

In order to protect juror privacy and avoid the risk that one juror’s responses to questions will affect other jurors’ attitudes or opinions, when there is an indication that a juror may have some bias or experience that could impact on service, the juror may be questioned at that time individually and out of the presence of others.

VII. Related rules and policies

A. Juror utilization

The court system tracks juror utilization with a standard Civil Voir Dire/Trial Data form (UCS-114), which must be completed each time a voir dire commences, regardless of the outcome. UCS-114 forms are provided by Commissioner of Jurors staff, who also provide instruction on how to complete the form. The form tracks the type of voir dire procedure used, number of jurors utilized, reasons why jurors were excused, and the outcome of the case. Usually, jury or court personnel complete a portion of the form and the remainder is completed by the judge or the judge’s part clerk. If no judge or JHO is present during voir dire, counsel will answer questions regarding jury selection and settlement. If the case proceeds to trial, the part clerk or court clerk completes the form.

³⁵ [Section 202.33](#), Appendix E (A)(7).

³⁶ [Section 202.33](#), Appendix E(A)(4) and Appendix E(A)(6).

B. Juror oaths

Before Voir Dire Questions. “Do you swear or affirm to answer truthfully all questions relative to your qualifications to serve as a juror in this action?”

After Selection. “Do you swear or affirm to try this action in a just and impartial manner, to the best of your judgment, and to render a verdict according to the law and the evidence?”

C. Five-day rule

A sworn juror may be released from service if the trial has not commenced within five days from the date the juror was sworn, subject to the discretion of the appropriate administrative judge.³⁷

D. Non-unanimous verdict

In New York State, a civil verdict can be reached by five out of six members of the jury.³⁸

³⁷ [Section 128.8\(a\)](#), Rules of the Chief Administrator.

³⁸ [CPLR 4113\(a\)](#).

Appendix A

Introductions by Judges or JHOs

Welcoming New Jurors Whenever possible, jurors should be welcomed to jury service by a judge or JHO (preferably wearing robes).³⁹ Here is a sample welcoming speech for new jurors.

Good morning jurors. Welcome to jury service. Our justice system could not function without your participation as jurors, and I can assure you that the judges, lawyers and parties in all the cases that come before our courts deeply appreciate your contributions and sacrifices.

I'm here to review a few aspects of your service.

First, I want to emphasize the importance of providing honest and complete answers to all the questions that will be asked of you, whether orally or in writing. Each question asked of you is designed to protect the integrity of our justice system and the fairness of our trials.

Second, court rules prohibit attorneys and parties from having any contact with jurors during the trial, including jury selection. If you happen to be in the same hallway or elevator with an attorney or a party from a case in which you are being questioned as a juror please do not talk to that attorney or party. And, please do not take offense if they do not acknowledge or speak to you.

This does not mean that you must be silent at all times. Any time you have a question about the process, court personnel in the jury assembly room and in the courtrooms are here to answer questions or assist you in finding the answers.

³⁹ [Section 128.11](#), Rules of the Chief Administrator.

Finally, your participation is equally valuable whether or not you are actually selected to sit on a jury. Your presence here today means that you are ready and willing to serve on a trial. I cannot tell you how long any particular trial will last nor what any particular trial will be about. You will have to wait to hear from the judge and attorneys in the trial for which you are questioned.

If you are selected to serve on a jury, the judge will explain the rules of the trial to you and the attorneys. Court personnel will assist you with other information about your service, and if you are seated on a trial you can address any questions to court personnel in the judge's courtroom.

There may be times when you have to wait longer than you would like. Please understand that while you are waiting, the judge is resolving issues that need to be addressed outside of your presence. I want to thank you in advance for your patience in dealing with these occasional delays during your jury service, and please be assured that we will do our best to minimize them.

In conclusion, your valuable time as a juror assures that our justice system continues to be the best justice system in the world – relying on ordinary citizens to make important decisions. I think you will find that everyone in this court is committed to making your experience as productive and satisfying as possible.

With that, I will turn the [microphone][podium] back over to Ms./Mr. _____ from our _____ County Commissioner of Jurors office, who will tell you more about your role and responsibilities as a juror.

Introducing Voir Dire Before any questions are asked during voir dire, the judge or JHO welcomes the jury panel and explains the process to the panel members. A sample introduction is provided below. It is estimated that this introduction will take less than three minutes to deliver once bracketed materials are selected or rejected. Judges and JHOs are encouraged to tailor their voir dire introductions to their own style while keeping them brief and informative.

Welcome to _____. We are about to begin the jury selection for the case of _____ against _____. My name is _____ and I will be supervising this process.

This is a civil matter. In this case [one party who is called the plaintiff is suing another party who is called the defendant] [## parties who are called the plaintiffs are suing ## other parties who are called the defendants]. In this case the plaintiff[s] [is][are] name[s] and the defendant[s] [is][are]name[s]. The trial involves: [Summarize very briefly. For example, “a dispute about a contract,” “a medical malpractice claim,” “claims arising out of an automobile accident,”]. The attorneys will tell you more about the case.

The jury selection process began when you completed the questionnaire. The questionnaire helps the attorneys plan what questions to ask you. Your answers are used only for selecting a jury in this case. When the oral questioning is completed, the questionnaires will be returned to you or collected and destroyed.

After my introductory remarks, the attorneys will tell you a little bit about this case. Then they will ask questions to learn if there is any reason why any of you should not sit as a juror in this case. The questions are not meant to pry or to be intrusive – only to give the attorneys the information they need to make decisions about whether or not you should sit as a juror in this case.

If you are asked a question that you would rather answer in private, or if there is anything you would like to explain to the attorneys in private, please do not hesitate to indicate that you would prefer privacy.

Some of you will be excused from this panel as a result of your answers to these general questions. If you are excused, you will return to the jury assembly room where the jury commissioner's staff will give you further instructions.

When jury selection is completed, the trial may proceed immediately or you may be asked to return for the start of the trial on another day. If you are excused from sitting on this case, please don't take this as a personal comment on you or your ability to be fair. It is often true that a particular juror is not well qualified to sit on a particular case but she or he *would be* well qualified to sit as a juror on a different case.

I want to thank all of you for your patience and cooperation. I will be leaving the room at this point. I will be available to consult with the attorneys at any time to make a decision as to whether or not any particular juror should be excused from sitting on this trial. With that, I will ask [Plaintiff's Attorney] to make a short statement describing what this case is about from the plaintiff's point of view.

Appendix B
Juror Questionnaire (UCS-140)

JUROR QUESTIONNAIRE

Please answer all questions. Your answers will be used to assist in selecting a jury. If there is anything you prefer to discuss in private, please ask to speak with the judge out of the hearing of other jurors by answering yes to Question 17. **THE QUESTIONNAIRE IS IN FOUR PARTS. PLEASE PRINT FIRMLY.**

1. Name _____

2. Age _____
3. Male Female
4. Town/village or geographical area (neighborhood) where you live?

5. Number of years
 - a. living at current address? _____
 - b. living in this county? _____
6. Where were you born? _____

7. Are you currently:

 Single Married Other
8. What is the highest level of education you completed?

 Less than high school

 High school graduate

 More than high school
 - a. number of years _____
 - b. course of study _____
9. Are you currently employed? No

 Yes – If yes:
 - a. who is your employer? _____

 - b. what is your occupation? _____

10. Occupations and relationship to you of other adults in your household:

11. Gender and age of your children:

12. Did you ever sit on a jury before? No

 Yes – If yes:
 - a. When? _____
 - b. Where? _____
 - c. Type of jury:

 Grand jury Trial Jury Both
 - d. Type of case(s):

 Criminal Civil Both
 - e. Did the jury reach a verdict?

 Yes No Both
13. Have you or someone close to you ever:

(check all that apply)

 Been the victim of a crime

 Been accused of a crime

 Been convicted of a crime

 Been a witness to a crime

 Testified in court

 Sued someone else

 Been sued by someone else.
14. Have you or someone close to you (relative or close friend) ever been employed by: *(check all that apply)*

 Law Office

 Medical profession

 Law enforcement or criminal justice agency

 Insurance industry

 Local municipality (city/county worker)
15. Are you actively involved in any civic, social, union, professional or other organizations? No

 Yes: _____

16. What are your hobbies or recreational activities?

17. Is there anything relevant to your jury service that you prefer to discuss in private?

 Yes No

I affirm that the statements made on this questionnaire are true and I understand that any false statements made on this questionnaire are punishable under Article 210 of the Penal Law.

_____/_____/_____
Signature of Prospective Juror Date

Appendix C
Procedures for Implementing Voir Dire Openings
Recommended by the [Jury Trial Project](#)

1. Each counsel shall be given a brief period of time (about five minutes) to summarize the case from their side’s point of view.¹ The time allotted for the voir dire openings should be added to the usual time allotted for voir dire.
2. Counsel should be given notice as early as possible of the court’s intent to use the voir dire openings procedure. When counsel is first informed of the procedure at the start of jury selection, which is usually the case, reasonable time should be given to allow the attorneys to collect their thoughts and prepare.
3. Counsel can be invited to give voir dire openings to the entire panel.
4. The procedure should be used only with consent of counsel for both sides and with both sides’ participation.
5. Special considerations for criminal matters:
 - (1) *Rosario* material ought to be provided to the defense before counsel is asked to deliver a voir dire opening.
 - (2) A defender’s decision to make a voir dire opening does not preclude exercising the defendant’s right not to make an opening statement at the start of the trial.
 - (3) The People’s voir dire should be first and there should be no rebuttal.

Suggested Judge’s Introduction

Before we begin the process of asking you questions about your qualifications to serve in this case, each attorney will give a brief statement about the case. I’ve asked them to limit their remarks to a brief presentation. Of course, what the attorneys say to you by way of their opening remarks both now, and again later just before we begin hearing from the witnesses, is not evidence. These statements are offered to you now as a kind of “preview” of the case. The purpose in doing so is to allow us a greater opportunity to explore with you anything that might impact your ability to serve fairly and impartially as a juror in this case.

¹ This recommendation is consistent with [Section 202.33](#), Appendix E(A)(4).

Appendix D

Guidelines for Assessing Potential Jurors' Ability to Understand and Communicate in the English Language²

Jurors in New York State must “be able to understand and communicate in the English language.” (Judiciary Law [Section 510](#)).

Permanent disqualifications from jury service based on a prospective juror’s inability to understand and communicate in the English language are made only in rare instances where a prospective juror has had significant opportunity over many years to learn to understand and communicate in English and has not been able to do so. Generally, jurors who appear to be unable to understand and communicate in English are temporarily disqualified from jury service for three years.

Prospective jurors are not temporarily disqualified based solely upon a negative response in writing to the question in both the Juror Qualification Questionnaire and the Jury Summons asking: Can you understand and communicate in the English language? A decision concerning a potential juror’s ability to understand and communicate in the English language is usually based on a personal interview conducted at the time that a potential juror appears in response to a summons. However, a juror can be disqualified without a personal interview if independent written proof is submitted demonstrating the individual’s inability to adequately communicate in English.

A prospective juror who says that he or she is unable to understand or communicate in the English language should be interviewed. The interview *may* be conducted by telephone in small counties where there are small numbers of people whose primary language is not English. However, an in-person interview is preferred and should be conducted when the prospective juror responds to a summons.

An announcement can be made in the Juror Assembly Room asking those who have difficulty understanding and communicating in English to go to a designated location for an interview. Wherever possible the announcement should be made in English and in other languages. The announcement should say: “It is a requirement of jury service that jurors be able to understand and communicate in the English language. If English is not your first language and you believe that you will not be able to understand what the judge, attorneys and witnesses say during a trial, please come to..... so that we may interview you and decide whether you are able to serve as a juror.”

The interview should be conducted in private and without assistance from an interpreter, wherever possible. Simple questions should be posed by the interviewer to assess the prospective juror’s basic English language skills. The best approach is to ask questions about the juror’s own background, a topic familiar to the prospective juror and therefore easy to discuss. The purpose of the questions is to make a judgment about the prospective juror’s ability to understand and communicate in English, not to collect information about the juror. The questions *may* include but are not limited to: For how long have you been in this country? Are you currently employed? What kind of work do you do? For how long have you had this job? What other jobs have you

² Promulgated by the Chief Administrative Judge, May 2, 2005.

had? Where did you go to school? How far did you go in school? What subjects have you studied in school? How did you travel to court today? How long did it take you to travel here today? Are other members of your family in this country? Which members of your family are here?

The decision as to whether the prospective juror is able to understand and communicate in the English language is a subjective one based on the accuracy and completeness of the prospective juror's responses to straightforward questions of the type listed above. A prospective juror who can answer most of the questions in English should not be excused. A prospective juror who demonstrates limitations in understanding and/or responding to the questions should be given a three-year temporary disqualification from jury service.

If, after an interview, it remains unclear as to whether a juror's ability to understand and communicate in English is adequate for jury service, the jury commissioner should qualify the juror and let the trial judge decide whether the juror is qualified to serve. A judge who concludes that the juror's ability to understand and communicate in English is not adequate for jury service should be asked to send a written request to the commissioner indicating whether the juror should be temporarily or permanently disqualified due to inability to understand and communicate in English.

A juror who is temporarily excused from jury service due to inability to understand or communicate in English receives an R3 code in the centralized jury data base which prevents that individual's name from being selected from lists of potential jurors for a period of three years. A juror who is permanently disqualified from jury service due to inability to understand or communicate in English receives an R10 code which permanently prevents that individual's name from ever being selected.

Appendix E

Civil Procedure Law and Rules - Sections Cited in this Booklet

Source: <http://public.leginfo.state.ny.us/fmload.cgi?BOT-06786703>

§ 4104. Number of jurors. A jury shall be composed of six persons.

§ 4105. Persons who constitute the jury. The first six persons who appear as their names are drawn and called, and are approved as indifferent between the parties, and not discharged or excused, must be sworn and constitute the jury to try the issue.

§ 4106. Alternate jurors. Unless the court, in its discretion, orders otherwise, one or two additional jurors, to be known as "alternate jurors", may be drawn upon the request of a party. Such jurors shall be drawn at the same time, from the same source, in the same manner, and have the same qualifications as the regular jurors, and be subject to the same examinations and challenges. They shall be seated with, take the oath with, and be treated in the same manner as the regular jurors, except that after final submission of the case, the court shall discharge the alternate jurors. If, before the final submission of the case, a regular juror dies, or becomes ill, or for any other reason is unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall replace the discharged juror in the jury box, and be treated as if he had been selected as one of the regular jurors.

Rule 4107. Judge present at examination of jurors. On application of any party, a judge shall be present at the examination of the jurors.

§ 4108. Challenges generally. An objection to the qualifications of a juror must be made by a challenge unless the parties stipulate to excuse him. A challenge of a juror, or a challenge to the panel or array of jurors, shall be tried and determined by the court.

§ 4109. Peremptory challenges. The plaintiff or plaintiffs shall have a combined total of three peremptory challenges plus one peremptory challenge for every two alternate jurors. The defendant or defendants (other than any third-party defendant or defendants) shall have a combined total of three peremptory challenges, plus one peremptory challenge for every two alternate jurors. The court, in its discretion before the examination of jurors begins, may grant an equal number of additional challenges to both sides as may be appropriate. In any case where a side has two or more parties, the court, in its discretion, may allocate that side's combined total of peremptory challenges among those parties in such manner as may be appropriate.

§ 4110. Challenges for cause. (a) Challenge to the favor. The fact that a juror is in the employ of a party to the action; or if a party to the action is a corporation, that he is a shareholder or a stockholder therein; or, in an action for damages for injuries to person or property, that he is a shareholder, stockholder, director, officer or employee, or in any manner interested, in any insurance company issuing policies for protection against liability for damages for injury to persons or property; shall constitute a ground for a challenge to the favor as to such juror. The fact that a juror is a resident of, or liable to pay taxes in, a city, village, town or county which is a party to the action shall not constitute a ground for challenge to the favor as to such juror. (b) Disqualification of juror for relationship. Persons shall be disqualified from sitting as jurors if

related within the sixth degree by consanguinity or affinity to a party. The party related to the juror must raise the objection before the case is opened; any other party must raise the objection no later than six months after the verdict.

§ 4113. Disagreement by jury. (a) Unanimous verdict not required. A verdict may be rendered by not less than five-sixths of the jurors constituting a jury. (b) Procedure where jurors disagree. Where five-sixths of the jurors constituting a jury cannot agree after being kept together for as long as is deemed reasonable by the court, the court shall discharge the jury and direct a new trial before another jury.

Appendix F

Uniform Civil Rules For The Supreme Court And The County Court

Section 202.33 Conduct of the Voir Dire.

Source: <http://www.nycourts.gov/rules/trialcourts/202.shtml#33>

(a) Trial Judge. All references to the trial judge in this section shall include any judge designated by the administrative judge in those instances where the case processing system or other logistical considerations do not permit the trial judge to perform the acts set forth in this section.

(b) Pre-Voir Dire Settlement Conference. Where the court has directed that jury selection begin, the trial judge shall meet prior to the actual commencement of jury selection with counsel who will be conducting the voir dire and shall attempt to bring about a disposition of the action.

(c) Method of Jury Selection. The trial judge shall direct the method of jury selection that shall be used for the voir dire from among the methods specified in subdivision (f) of this section.

(d) Time Limitations. The trial judge shall establish time limitations for the questioning of prospective jurors during the voir dire. At the discretion of the judge, the limits established may consist of a general period for the completion of the questioning, a period after which attorneys shall report back to the judge on the progress of the voir dire, and/or specific time periods for the questioning of Panels of jurors or individual jurors.

(e) Presence of Judge at the Voir Dire. In order to ensure an efficient and dignified selection process, the trial judge shall preside at the commencement of the voir dire and open the voir dire proceeding. The trial judge shall determine whether supervision of the voir dire should continue after the voir dire has commenced and, in his or her discretion, preside over part of or all of the remainder of the voir dire.

(f) Methods of Jury Selection. Counsel shall select prospective jurors in accordance with the general principles applicable to jury selection set forth in subdivision (g) of this section and using the method designated by the judge pursuant to subdivision (c) of this section. The methods that may be selected are:

- (1) "White's method," as set forth in subdivision (g) of this section;
- (2) "struck method," as set forth in subdivision (g) of this section;
- (3) "strike and replace method," in districts where the specifics of that method have been submitted to the Chief Administrator by the Administrative Judge and approved by the Chief Administrator for that district. The strike and replace method shall be approved only in those districts where the Chief Administrator, in his or her discretion, has determined that experience with the method in the district has resulted in an efficient and orderly selection process; or
- (4) other methods that may be submitted to the Chief Administrator for use on an experimental basis by the appropriate Administrative Judge and approved by the Chief Administrator.

(g) Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

APPENDIX E

Procedures for questioning, challenging and selecting jurors authorized by section 202.33 of the Rules of the Chief Administrator of the Courts.

A. General principles applicable to jury selection. Selection of jurors pursuant to any of the methods authorized by section 202.33(e) of the Rules of the Chief Administrator shall be governed by the following:

(1) If for any reason jury selection cannot proceed immediately, counsel shall return promptly to the courtroom of the assigned trial judge or the Trial Assignment Part or any other designated location for further instructions.

(2) Generally, a total of eight jurors, including two alternates, shall be selected. The court may permit a greater number of alternates if a lengthy trial is expected or for any appropriate reason. Counsel may consent to the use of "nondesigned" alternate jurors, in which event no distinction shall be made during jury selection between jurors and alternates, but the number of peremptory challenges in such cases shall consist of the sum of the peremptory challenges that would have been available to challenge both jurors and designated alternates.

(3) All prospective jurors shall complete a background questionnaire supplied by the court in a form approved by the Chief Administrator. Prior to the commencement of jury selection, completed questionnaires shall be made available to counsel. Upon completion of jury selection, or upon removal of a prospective juror, the questionnaires shall be either returned to the respective jurors or collected and discarded by court staff in a manner that ensures juror privacy. With Court approval, which shall take into consideration concern for juror privacy, the parties may supplement the questionnaire to address concerns unique to a specific case.

(4) During the voir dire each attorney may state generally the contentions of his or her client, and identify the parties, attorneys and the witnesses likely to be called. However, counsel may not read from any of the pleadings in the action or inform potential jurors of the amount of money at issue.

(5) Counsel shall exercise peremptory challenges outside of the presence of the Panel of prospective jurors.

(6) Counsel shall avoid discussing legal concepts such as burden of proof, which are the province of the court.

(7) If an unusual delay or a lengthy trial is anticipated, counsel may so advise prospective jurors.

(8) If counsel objects to anything said or done by any other counsel during the selection process, the objecting counsel shall unobtrusively request that all counsel step outside of the juror's presence, and counsel shall make a determined effort to resolve the problem. Should that effort fail, counsel shall immediately bring the problem to the attention of the assigned trial judge, the Trial Assignment Part judge or any other designated judge.

(9) After jury selection is completed, counsel shall advise the clerk of the assigned Trial Part or of the Trial Assignment Part or other designated part. If counsel anticipates the need during trial of special equipment (if available) or special assistance, such as an interpreter, counsel shall so inform the clerk at that time.

B. "White's Method"

(1) Prior to the identification of the prospective jurors to be seated in the jury box, counsel shall ask questions generally to all of the jurors in the room to determine whether any prospective juror in the room has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(2) After general questions have been asked to the group of prospective jurors, jury selection shall continue in rounds, with each round to consist of the following: (1) seating prospective jurors in the jury box; (2) questioning of seated prospective jurors; and (3) removal of seated prospective jurors upon exercise of challenges. Jurors removed for cause shall immediately be replaced during each round. The first round shall begin initially with the seating of six prospective jurors (where undesignated alternates are used, additional prospective jurors equal to the number of alternate jurors shall be seated as well).

(3) In each round, the questioning of the seated prospective jurors shall be conducted first by counsel for the plaintiff, followed by counsel for the remaining parties in the order in which their names appear in the caption. Counsel may be permitted to ask follow-up questions. Within each round, challenges for cause shall be exercised by any party prior to the exercise of peremptory challenges and as soon as the reason therefor becomes apparent. Upon replacement of a prospective juror removed for cause, questioning shall revert to the plaintiff.

(4) Following questioning and the exercise of challenges for cause, peremptory challenges shall be exercised one at a time and alternately as follows: In the first round, in caption order, each attorney shall exercise one peremptory challenge by removing a prospective juror's name from a "board" passed back and forth between or among counsel. An attorney alternatively may waive the making of a peremptory challenge. An attorney may exercise a second, single peremptory challenge within the round only after all other attorneys have either exercised or waived their first peremptory challenges. The board shall continue to circulate among the attorneys until no other peremptory challenges are exercised. An attorney who waives a challenge may not thereafter exercise a peremptory challenge within the round, but may exercise remaining peremptory challenges in subsequent rounds. The counsel last able to exercise a peremptory challenge in a round

is not confined to the exercise of a single challenge but may then exercise one or more peremptory challenges.

(5) In subsequent rounds, the first exercise of peremptory challenges shall alternate from side to side. Where a side consists of multiple parties, commencement of the exercise of peremptory challenges in subsequent rounds shall rotate among the parties within the side. In each such round, before the board is to be passed to the other side, the board must be passed to all remaining parties within the side, in caption order, starting from the first party in the rotation for that round.

(6) At the end of each round, those seated jurors who remain unchallenged shall be sworn and removed from the room. The challenged jurors shall be replaced, and a new round shall commence.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Designated alternate jurors shall be selected in the same manner as described above, with the order of exercise of peremptory challenges continuing as the next round following the last completed round of challenges to regular jurors. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

C. "Struck Method"

(1) Unless otherwise ordered by the Court, selection of jurors shall be made from an initial Panel of 25 prospective jurors, who shall be seated randomly and who shall maintain the order of seating throughout the voir dire. If fewer prospective jurors are needed due to the use of designated alternate jurors or for any other reason, the size of the Panel may be decreased.

(2) Counsel first shall ask questions generally to the prospective jurors as a group to determine whether any prospective juror has knowledge of the subject matter, the parties, their attorneys or the prospective witnesses. A response from a juror that requires further elaboration may be the subject of further questioning of that juror by counsel on an individual basis. Counsel may exercise challenges for cause at this time.

(3) After the general questioning has been completed, in an action with one plaintiff and one defendant, counsel for the plaintiff initially shall question the prospective jurors, followed by questioning by defendant's counsel. Counsel may be permitted to ask follow-up questions. In cases with multiple parties, questioning shall be undertaken by counsel in the order in which the parties' names appear in the caption. A challenge for cause may be made by counsel to any party as soon as the reason therefor becomes apparent. At the end of the period, all challenges for cause to any prospective juror on the Panel must have been exercised by respective counsel.

(4) After challenges for cause are exercised, the number of prospective jurors remaining shall be counted. If that number is less than the total number of jurors to be selected (including alternates, where non-designated alternates are being used) plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised

by the parties (such sum shall be referred to as the "jury Panel number"), additional prospective jurors shall be added until the number of prospective jurors not subject to challenge for cause equals or exceeds the jury Panel number. Counsel for each party then shall question each replacement juror pursuant to the procedure set forth in paragraph (3).

(5) After all prospective jurors in the Panel have been questioned, and all challenges for cause have been made, counsel for each party, one at a time beginning with counsel for the plaintiff, shall then exercise allowable peremptory challenges by alternately striking a single juror's name from a list or ballot passed back and forth between or among counsel until all challenges are exhausted or waived. In cases with multiple plaintiffs and/or defendants, peremptory challenges shall be exercised by counsel in the order in which the parties' names appear in the caption, unless following that order would, in the opinion of the court, unduly favor a side. In that event, the court, after consulting with the parties, shall specify the order in which the peremptory challenges shall be exercised in a manner that shall balance the interests of the parties. An attorney who waives a challenge may not thereafter exercise a peremptory challenge. Any Batson or other objections shall be resolved by the court before any of the struck jurors are dismissed.

(6) After all peremptory challenges have been made, the trial jurors (including alternates when non-designated alternates are used) then shall be selected in the order in which they have been seated from those prospective jurors remaining on the Panel.

(7) The selection of designated alternate jurors shall take place after the selection of the six jurors. Counsel shall select designated alternates in the same manner set forth in these rules, but with an initial Panel of not more than 10 prospective alternates unless otherwise directed by the court. The jury Panel number for designated alternate jurors shall be equal to the number of alternates plus the maximum number of peremptory challenges allowed by the court or by statute that may be exercised by the parties. The total number of peremptory challenges to alternates may be exercised against any alternate, regardless of seat.

Historical Note Sec. filed Dec. 7, 1995 eff. Jan. 1, 1996.