

VOIR DIRE

A BENCH CARD FOR JUSTICES OF THE PEACE

What is “Voir Dire”?

Voir Dire is the process of eliminating jurors that Texas courts use to determine which prospective jurors will sit on the jury for a trial. In justice courts, juries are made up of 6 jurors. After the court has determined which jurors to excuse for qualifications, exemptions, and excuses, each party receives time to ask the remaining potential jurors questions related to their case to determine if the prospective jurors can be fair, unbiased, and capable of serving.

Swearing in the Venire

Criminal Trial

"You, and each of you, do solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching on your service and qualification as a juror, (so help you God)." *CCP Art. 35.02*

Civil Trial

"You, and each of you, do solemnly swear that you will true answers give to all questions propounded to you concerning your qualifications as a juror, (so help you God)." *Rule 226*

General Qualifications

- Is at least 18 years of age;
- Is a citizen of the United States;
- Is a resident of this state and of the county in which the person is to serve as a juror;
- Is qualified under the constitution and laws to vote in the county in which the person is to serve as a juror;
- Is of sound mind and good moral character;
- Is able to read and write;
- Has not served as a petit juror for six days during the preceding three months in the county court or during the preceding six months in the district court;
- Has not been convicted of misdemeanor theft or a felony; and
- Is not under indictment or other legal accusation for misdemeanor theft or a felony.

Gov't Code § 62.102, CCP Art. 35.12

Exemption from Jury Service

- Is over 70 years of age;
- Has legal custody of a child younger than 12 years of age and the person's service on the jury requires leaving the child without adequate supervision;
- Is a student of a public or private secondary school;
- Is a person enrolled and in actual attendance at an institution of higher education;
- Is an officer or an employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of the state government;
- Is summoned for service in a county with a population of at least 200,000, unless that county uses a jury plan under Government Code Section 62.011 and the period authorized under Section 62.011(b) exceeds two years, and the person has served as a petit juror in the county during the 24-month period preceding the date the person is to appear for jury service;
- Is the primary caretaker of a person who is unable to care for himself or herself;
- Is summoned for service in a county with a population of 20,000 and the person has served as a petit juror in the county during the three-year period preceding the date the person is to appear for jury service. This does not apply if the jury wheel in the county has been reconstituted after the date the person served as a petit juror;
- Is a member of the United States military forces serving on active duty and deployed to a location away from the person's home station and out of the county of residence.

Gov't Code § 62.106



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Excuses

- The Court can excuse a party who they believe has a sufficient excuse.
- The Court cannot excuse a prospective juror for an economic reason without both parties being present and approving the release of that juror for that reason.

Things the Parties Can't Ask

- Repetitive questions
- Irrelevant or immaterial questions
- Commitment questions – A party can't try to make a potential juror commit to a verdict *based on facts* other than something that would prove they have a bias or prejudice. A party can ask a commitment question if it is simply asking if the jurors can follow the law without applying specific facts.

Examples:

Allowable: If I proved all of the elements of the offense beyond a reasonable doubt, could you convict? (follow the law)

Not Allowable: If I proved the Defendant refused a breath test, would you convict? (applying facts)

Peremptory Challenges/Strikes

Each side may strike three (3) people from the jury pool without telling the court a reason, as long as they are not challenged by the other side with a Batson Challenge.

Batson Challenge

When one side argues that the other side has used peremptory strikes to eliminate otherwise eligible jurors because of race, ethnicity, or sex.

Challenges/Strikes for Cause

- A request that a prospective juror should be struck, meaning removed or dismissed, because there is a specific reason to believe the person can't be fair, unbiased, or capable of serving as a juror.

Common Challenges for Cause

- Unfair bias for/against law enforcement
- Personal relationship with one of the parties that creates bias or prejudice
- Experience with the justice system that creates bias or prejudice
- Sovereign citizens - couldn't find anyone guilty
- Can't hear or see
- Witness in this case
- Related to a party within third degree consanguinity or affinity (Government Code Ch. 573)
- Can't consider full range of punishment

Swearing in the Jury

Criminal Trial

"You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, (so help you God)."

CCP Art. 35.22

Civil Trial

"You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court, (so help you God)."

Rule 236

