

Rule 220.3. [Voir Dire] Voir Dire of Jurors.

(a) **Judge's Presence Required. Voir dire of prospective jurors shall be conducted, and the jurors shall be selected, in the presence of a judge, unless the judge's presence is waived by all parties with the consent of the court.**

(b) **Instruction of Juror Duties.** Upon completion of the oath, the judge shall instruct the prospective jurors upon their duties and restrictions while serving as jurors, and of any sanctions for violation of those duties and restrictions, including those in Rules 220.1 and 220.2.

~~(b)~~(c) **[Voir dire] Juror Information. Voir dire** shall be conducted to provide the opportunity to obtain, at a minimum, a full description of the following information, where relevant, concerning the prospective jurors and their households:

- (1) **[Name] name**;
- (2) **[Date] year** and place of birth;
- (3) **[Residential] residential** neighborhood and zip code (not street address);
- (4) **[Marital] marital** status;
- (5) **[Nature] nature** and extent of education;
- (6) **[Number] number** and ages of children;
- (7) **[Name] name**, age, and relationship of members of prospective juror's household;
- (8) **[Occupation] occupation** and employment history of the prospective juror, the juror's spouse and children, and members of the juror's household;
- (9) **[Involvement] involvement** as a party or a witness in a civil lawsuit or a criminal case;
- (10) **[Relationship] relationship**, friendship, or association with a law enforcement officer, a lawyer, or any person affiliated with the courts of any judicial district;

- (11) **[Relationship] relationship** of the prospective juror or any member of the prospective juror's immediate family to the insurance industry, including employee, claims adjustor, investigator, agent, or stockholder in an insurance company;
- (12) **[Motor] motor** vehicle operation and licensure;
- (13) **[Physical] physical** or mental condition affecting ability to serve on a jury;
- (14) **[Reasons] reasons** the prospective juror believes **[he or she] the prospective juror** cannot or should not serve as a juror;
- (15) **[Relationship] relationship**, friendship, or association with the parties, the attorneys, and prospective witnesses of the particular case to be heard;
- (16) **[Ability] ability** to refrain from using a computer, cellular telephone, or other electronic device with communication capabilities in violation of the provisions of Rule 220.1; and
- (17) **[Such] such** other pertinent information as may be appropriate to the particular case to achieve a competent, fair, and impartial jury.

[Note: For example, under presently prevailing law as established by the Superior Court, *voir dire* should have been allowed with respect to the effect of pre-trial publicity on prospective jurors' "attitudes regarding medical malpractice and tort reform." *Capoferri v. Children's Hosp. of Phila.*, 893 A.2d 133 (Pa.Super. 2006) (en banc).]

[(c)](d) Voir Dire by Written Questionnaire Permitted. The court may provide for **[voir dire] voir dire** to include the use of a written questionnaire. **[However, the] The** use of a written questionnaire without the opportunity for oral examination by the court or counsel is not a sufficient **[voir dire] voir dire**.

[Note: The parties or their attorneys may conduct the examination of the prospective jurors unless the court itself conducts the examination or otherwise directs that the examination be conducted by a court employee. Any dispute shall be resolved by the court.]

A written questionnaire may be used to facilitate and expedite the voir dire examination by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.]

[(d)](e) Individual Voir Dire Permitted. The court may permit all or part of the examination of a juror out of the presence of other jurors.

(f) Recording of Voir Dire. Voir dire, including all rulings by a judge, shall be recorded in full unless the recording is waived by all parties. The recording shall be transcribed only upon written request of a party or order of court.

Comment:

Subdivision (a) – The permitted waiver is a waiver only of the judge’s physical presence during voir dire. It is not a waiver of a party’s opportunity to create a record or to have the judge make decisions based upon that record. This subdivision is also intended to provide flexibility to permit another judge, or a senior judge, in the judicial district to preside over voir dire, as circumstances warrant.

Subdivision (c)(17) – See Capoferri v. Children’s Hospital of Philadelphia, 893 A.2d 133 (Pa. Super. 2006) (en banc) (voir dire should have been allowed with respect to the effect of pre-trial publicity on prospective jurors’ “attitudes regarding medical malpractice and tort reform”), as an example of the type of information that may be sought from potential jurors to achieve a competent, fair, and impartial jury in a particular case.

Subdivision (d) – The parties or their attorneys may conduct voir dire of the prospective jurors unless the court itself conducts voir dire or otherwise directs that voir dire be conducted by a court employee. Any dispute shall be resolved by the court.

A written questionnaire may be used to facilitate and expedite voir dire by providing the trial judge and attorneys with basic background information about the jurors, thereby eliminating the need for many commonly asked questions.

Historical Commentary

The following commentary is historical in nature and represents statements of the Committee at the time of rulemaking:

Explanatory Comment—1997

New Rule 220.1 governing voir dire, the examination of prospective jurors, furthers the goal of establishing a uniform civil practice throughout the Commonwealth with respect to the information which the parties may obtain concerning prospective jurors.

The rule specifies the information which the parties should be able to obtain through voir dire but does not require a particular manner of voir dire. Subdivision (a) is devoted to listing the information to which the parties are entitled.

The rule does not dictate the mechanics of voir dire, but leaves the method of voir dire to the local courts of common pleas. Subdivision (b) does give some guidance, however. Voir dire may include the use of a written questionnaire, but no form of questionnaire is mandated or suggested. The note observes that a written questionnaire may “facilitate and expedite” voir dire by providing basic background information. The rule provides that “the use of a written questionnaire without the opportunity for oral examination is not a sufficient voir dire.” The parties are entitled to both hear prospective jurors and observe their demeanor.

The rule recognizes that service upon a jury may be a new and disquieting experience to citizens called as prospective jurors. Information may be sought which a prospective juror feels uncomfortable revealing in open court. Thus, subdivision (c) provides that the “court may permit all or part of the examination of a juror out of the presence of other jurors.”

Explanatory Comment—2008

Rule 220.1 governing *voir dire* has been amended with the addition of a note to subdivision (a)(16). Subdivision (a) lists the information to which parties are entitled to obtain during *voir dire*, concluding with a catch-all provision in subparagraph (16). The note cites *Capoferri v. Children's Hospital of Philadelphia*, 893 A.2d 133 (Pa. Super. 2006) (en banc), as an example of the type of information that may be sought from potential jurors pursuant to subparagraph (16) to achieve a competent, fair and impartial jury in a particular case.

Explanatory Comment—2015

The Supreme Court of Pennsylvania has adopted new Rules 220.1 and 220.2 and the amendment of current Rules 220.1 and 223.1. The changes are intended to provide guidance to the bench and bar regarding the use of electronic devices by jurors in civil cases.

The new rules and amendments provide for jurors to be instructed that the use of electronic devices is restricted during their tenure as a prospective juror, *i.e.* a member of the jury pool, and as a selected juror. The new provisions require the trial court to instruct jurors that they may not conduct independent research on the Internet about the case, communicate about the case electronically, *e.g.* “tweet” or “blog,” or use such devices during juror service. A trial court is required to instruct jurors at the earliest opportunity of interaction between the juror and the trial court, and then repeat those instructions as often as practicable. The new rules and amendments provide for sanctions against any person who violates the provisions of these rules. It should also be noted that a note to new Rule 220.1 cross-references Section 1.180 of the Pennsylvania Suggested Civil Jury Instructions, Pa. SSJI (Civ), § 1.180. These instructions specifically address the use of electronic devices by jurors.

While the proposal focuses on the use of electronic devices by jurors, it remains silent as to their use in the courtroom by the public and media. Rule of Judicial Administration 1910 outlines the responsibility of a trial court regarding the broadcasting, televising, or taking of photographs in the courtroom in civil proceedings.