

**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Proposed Recommendation No. 246

Proposed Amendment of Rule 220.1 Governing Voir Dire

The Civil Procedural Rules Committee proposes that Rule of Civil Procedure 220.1 governing voir dire sales be amended as set forth herein. The proposed recommendation is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court of Pennsylvania. All communications in reference to the proposed recommendation should be sent no later than **June 9, 2010** to:

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Rule 220.1. Voir Dire

(a) 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;
- (2) **[Date] Year** and place of birth;
- (3) Residential neighborhood and zip code (not street address);
- (4) Marital status;
- (5) Nature and extent of education;
- (6) Number and ages of children;
- (7) Name, age and relationship of members of prospective juror's household;
- (8) Occupation and employment history of the prospective juror, the juror's spouse and children and members of the juror's household;
- (9) Involvement **of the prospective juror or any member of the prospective juror's immediate family** as a party or a witness in a civil lawsuit or criminal case;
- (10) Relationship, friendship or association **of the prospective juror or any member of the prospective juror's immediate family** with a law enforcement officer, a lawyer or any person affiliated with the courts of any judicial district;
- (11) Relationship of the prospective juror or any member of the prospective juror's immediate family to the insurance industry, including employee, claims adjuster, investigator, agent or stockholder in an insurance company;
- (12) Motor vehicle operation and licensure;
- (13) Physical or mental condition affecting ability to serve on a jury;

(14) Reasons the prospective juror believes he or she cannot or should not serve as a juror;

(15) Relationship, friendship or association **of the prospective juror or any member of the prospective juror's immediate family** with the parties, the attorneys and prospective witnesses of the particular case to be heard;

(16) 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).

(b)(1)(i) A judge shall initiate the examination of jurors in open court. The initial examination shall include, but not be limited to, identifying the parties and their attorneys, briefly outlining the nature of the case, and explaining the purposes of the examination.

(ii) Except as provided in subdivision (b)(1)(i), the attorneys shall conduct the examination of the prospective jurors. Any dispute shall be resolved by a judge.

(2) The court may provide for *voir dire* to include the use of a written questionnaire. However, the use of a written questionnaire without the opportunity for oral examination by the court or counsel is not a sufficient *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.

[(c) The court may permit all or part of the examination of a juror out of the presence of other jurors.]

(c)(1) Voir dire examination, including all rulings by a judge, shall be recorded in full unless the recording is waived. The record shall be transcribed only upon written request of a party or order of court.

(2) Subsequent to the procedure in subdivision (b), upon request by an attorney, a judge shall permit individual examination of a juror in a separate room beyond the hearing and presence of other jurors.

Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rule 220.1 governing voir dire in several respects.

Subdivision (a) provides certain categories of information that may be asked of prospective jurors. Subdivisions (a)(9), (10), and (15) currently ask about involvement of the prospective juror as a party or witness in a civil lawsuit, or the relationship of the prospective juror with a law enforcement officer, a lawyer or any person affiliated with the courts of any judicial district, or with the parties, the attorneys and prospective witnesses of the particular case to be heard. The amendment to subdivision (a) would expand these categories to include questions concerning the same involvement or relationships of a member of the prospective juror's immediate family.

The amendment to subdivision (b) would require a judge to initiate the voir dire examination, which would include the identification of the parties and their attorneys, a brief outline of the nature of the case, and an explanation of the purposes of the examination. Upon the conclusion of the judge's examination, the attorneys for the parties shall conduct examination of the prospective jurors. Upon the conclusion of the examination by the attorneys, new subdivision (c)(2) provides that a judge shall permit individual examination of a prospective juror in a separate room out of the hearing and presence of other jurors.

The amendment to subdivision (c)(1) would require the entire voir dire examination to be recorded in full, including all ruling by a judge, unless it is waived by the parties.

By the Civil Procedural
Rules Committee

Stewart L. Kurtz
Chair