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## **TIPS FOR AN EFFECTIVE VOIR DIRE**

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## TIPS FOR AN EFFECTIVE VOIR DIRE

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### I. INTRODUCTION

The importance of voir dire cannot be overstated. All of the compelling advocacy and evidence in the world may be insufficient to persuade a biased jury.

In spite of the importance of voir dire, many of the voir dire questions given in courtrooms are boring, formulaic attempts to either preach to the jurors or to argue the case to them. These approaches run counter to the rules and the case law and hinder your accomplishment of two crucial objectives:

1. Beginning to convince the jurors that you and your client wear the white hats, and that you are only interested in letting the chips fall where they may, and
2. Obtaining valuable feedback from the jurors that will enable you to make intelligent choices and strikes.

Voir dire is not the time for closing arguments. Save your closing arguments for later. Make the most of the one opportunity that you have before the verdict to hear from the jurors. Try to adopt the attitude that nothing that the jurors say can hurt you or your client. Instead, what the jurors tell you can only help you make more informed choices. Do not believe that one juror's lifetime of beliefs can be tainted or altered by another juror's contradictory statement. And do not be one of those trial attorneys who use "Thank you for sharing," as code words for "Shut up, I don't want you tainting my other jurors!"

But, how can you accomplish your crucial objectives within the parameters set out by the cases and within the time allotted to you by the judge for voir dire?

### II. QUALIFICATIONS AND EXEMPTIONS OF JURORS

The default rule is that all jurors are competent unless disqualified by statute. Tex. Gov't Code § 62.101.

Qualified jurors must:

1. Be 18 years of age. *Id.* at § 62.102(1).
2. Be a citizen of the United States. *Id.* at § 62.102(2).

3. Be a citizen of Texas and of the county where he is to serve. *Id.* at § 62.102(3).
4. Be qualified to vote, but not necessarily be registered to vote in the county where he is to serve. *Id.* at §§ 62.102(4) & 62.1031.
5. Be of sound mind and good moral character. *Id.* at § 62.102(5).
6. Be able to read and write. *Id.* at § 62.102(6). The trial court can suspend this requirement if there are not enough jurors in the county who can read and write. *Id.* at § 62.103(a).
7. Have not served as a juror for six or more days during the preceding three months in the county court or during the preceding six months in the district court. *Id.* at § 62.102(7).
8. Have not been convicted of misdemeanor theft or a felony. *Id.* at § 62.102(8). Note that Texas Rule of Civil Procedure 230 prohibits asking whether a member of the panel was convicted of one of the disqualifying offenses or whether he has been charged with a theft or a felony.
9. Not be under indictment or other legal accusation for misdemeanor theft or a felony. *Id.* at § 62.102(9).

A person is disqualified from serving as a juror if:

1. The person is a witness in the case. Tex. Gov't Code § 62.105(1).
2. The person has a direct or indirect financial interest in the case. Tex. Gov't Code § 62.105(2).
3. The person is related by consanguinity or affinity within the third degree to a party in the case. Tex. Gov't Code § 62.105(3).
4. The person has served as a juror in an earlier trial of the same case or in another case involving the same questions of fact. Tex. Gov't Code § 62.105(5).
5. The person has a bias or a prejudice in favor of, or against a party in the case. Tex. Gov't Code § 62.105(4).

### **III. SCOPE OF VOIR DIRE EXAMINATION**

The trial court has broad discretion in controlling voir dire. *Cortez v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 92 (Tex. 2005). The court must give the parties broad latitude to examine the

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