

Appendix 1A: Proposed Amendments to Rules of Civil Procedure (Markup)

Rule 16. Scheduling and Management of Actions

(a) – (c) [No Change.].

(d) Scheduling Conferences. On a party’s written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) – (18) [No Change.]

~~(19) discuss any time limits on trial proceedings, juror notebooks, brief pre-voir dire opening statements, and preliminary jury instructions, and the effective management of documents and exhibits;~~

~~(20)~~(19) determine how a verbatim record of future proceedings in the action will be made; and

~~(21)~~(20) discuss other matters and enter other orders that the court deems appropriate.

(e) Trial-Setting Conference.

(1) *Generally.* [No Change.]

(2) *Subject Matter.* In addition to setting a trial date, the court may discuss at the Trial-Setting Conference:

(A) – (C) [No Change]

(D) using juror questionnaires the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements;

(E) [No Change]

(F) giving ~~brief pre-voir dire opening statements and preliminary jury instructions;~~

(G) – (H) [No Change]

(f) Joint Pretrial Statement; Trial Management Conference.

(1) – (3) [No Change.]

(4) *Additional Documents to File if Trial Is to a Jury*. If the trial is to a jury, the parties must--on the same day they file the Joint Pretrial Statement—file:

(A) an agreed-on set of jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire questions; and

(B) any additional jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire questions, but not agreed on.

(5) – (8) [No Change.]

(g) – (j) [No Change.]

COMMENTS

[No Change.]

Rule 47. Jury Selection; Juror Information; Voir Dire; Challenges

(a) Jury Selection. [No Change.]

(b) Juror Information.

(1) *Personal Information.* Before jury selection and oral voir dire examination starts, the clerk must provide the parties with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury experience, and felony conviction status. ~~The clerk must keep all prospective jurors' home and business telephone numbers and addresses confidential and may not disclose them unless good cause is shown.~~

(2) Confidentiality of Eligibility and Biographical Information. The clerk must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may only be used for the purpose of jury selection. The clerk must keep all jurors' home and business telephone numbers and addresses confidential and may not disclose them unless good cause is shown.

~~(2)(3)~~ Confidentiality of Case-Specific Written Questionnaires. ~~If the~~ The court may order requires prospective jurors to complete a case-specific written questionnaire, it must maintain any completed case-specific written questionnaires in a manner and form approved by the court as part of the case file prepared by the parties and submitted to the court for approval before trial. Before conducting oral voir dire, ~~Unless the court orders otherwise, the clerk must provide~~ the prospective jurors' responses to the case-specific written questionnaires must be provided to each party by the clerk or court. ~~copies of any such juror questionnaire and answers to the parties and their respective counsel.~~ Any party or counsel receiving a copy of ~~the~~ responses to the case-specific written questionnaires ~~questionnaire must keep the information strictly confidential and must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case. When jury selection is ~~done~~ completed, each recipient must destroy or return to the court all copies of the juror responses to the case-specific written questionnaires and answers to the clerk.~~

(c) Voir Dire Oath and Procedure.

(1) *Voir Dire Affirmation and Oath.* Each prospective juror must swear or affirm that the answers provided in response to the case-specific written questionnaires are truthful. Before oral voir dire, The each prospective jurors must take an oath administered by the clerk before they are examined about their qualifications. The oath's substance must be as follows: "You do solemnly swear (or affirm) that you

will truthfully answer all questions about your qualifications to serve as a trial juror in this action, so help you God.” If a prospective juror elects to affirm rather than swear the oath, the clause “so help you God” must be omitted.

(2) Explanation of Voir Dire. At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will use the prospective jurors’ information, and who may have access to the information prospective jurors provide.

(3) Case-Specific Written Questionnaires. Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The case-specific written questionnaire should include questions about the prospective juror’s qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.

~~(2)~~(4) Brief Opening Statements. Before oral voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.

~~(3)~~(5) Extent of Oral Voir Dire.

(A) Questioning by Court and Parties. The court must conduct voir dire orally. During oral examination, ~~The~~ the court must thoroughly question the jury panel to ensure that prospective jurors are qualified, fair, and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limits on the questioning. Written questions also may be used as provided in Rule 47(b)(2). A party’s failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination.

(B) Extent of Questioning. Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a ~~for-cause~~ challenge for cause.

(d) Challenges for Cause.

(1) – (2) [No Change.]

(3) Burden of Proof. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. In making its determination, the court must consider the totality of a prospective juror’s conduct and answers given during voir dire.

(e)Alternate Jurors. [No Change.]

COMMENTS [as amended 2022]

2022 Amendment to Rule 47(c)(3)

To allow the process of challenging jurors for cause to work effectively, Rule 47(c)(3) encourages the use of case-specific written questionnaires during voir dire where feasible, deferring to the court on the method and manner of administration. Courts may use paper or electronic case specific questionnaires, administer case-specific questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

2022 Amendment to Rule 47(c)(5)

When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors' views narratively. The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law.

1995 Amendment to Rule 47(a) and (e)

[Formerly Rule 47(a)]

Prior to the 1995 amendment, [Rule 47(a) and (e) (Jury Selection and Peremptory Strikes) (formerly Rule 47(a)(1))] was read to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. Challenges for cause are heard and decided with the jurors being examined in the box. A juror excused for cause leaves the courtroom in the presence and view of the other panel members, after which the excused juror' s position is filled by a panel member who responds to all previous and future questions of the potential jurors.

The purpose of this amendment is to allow the trial judge to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. See T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, *The Judges' Journal* 9 (Summer 1990); A.B.A. *Standards Relating to Juror Use and Management*, Standard 7, at 68-74 (1983); and “The Jury Project,” *Report to the Chief Judge of the State of New York* 58-60 (1984).

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. ~~Following disposition of the for cause challenges, the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.~~

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the juror jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

Appendix 1B: Proposed Amendments to Rules of Civil Procedure (Clean)

Rule 16. Scheduling and Management of Actions

(a) – (c) [No Change.].

(d) Scheduling Conferences. On a party’s written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) – (18) [No Change.]

(19) determine how a verbatim record of future proceedings in the action will be made; and

(20) discuss other matters and enter other orders that the court deems appropriate.

(e) Trial-Setting Conference.

(1) *Generally.* [No Change.]

(2) *Subject Matter.* In addition to setting a trial date, the court may discuss at the Trial-Setting Conference:

(A) – (C) [No Change].

(D) the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements;

(E) [No Change]

(F) giving preliminary jury instructions;

(G) – (H) [No Change.]

(f) Joint Pretrial Statement; Trial Management Conference.

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(4) *Additional Documents to File if Trial Is to a Jury.* If the trial is to a jury, the parties must--on the same day they file the Joint Pretrial Statement--file:

(A) an agreed-on set of jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire; and

(B) any additional jury instructions, verdict forms, questions for a case-specific written questionnaire, and questions for oral voir dire, but not agreed on.

(5) – (8) [No Change.]

(g) – (j) [No Change.]

COMMENTS

[No Change.]

Rule 47. Jury Selection; Juror Information; Voir Dire; Challenges

(a) Jury Selection. [No Change.]

(b) Juror Information.

(1) *Personal Information.* Before jury selection and oral voir dire examination starts, the clerk must provide the parties with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury experience, and felony conviction status.

(2) *Confidentiality of Eligibility and Biographical Information.* The clerk must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may only be used for the purpose of jury selection. The clerk must keep all jurors' home and business telephone numbers and addresses confidential and may not disclose them unless good cause is shown.

(3) *Confidentiality of Case-Specific Written Questionnaires.* If the court requires prospective jurors to complete a case-specific written questionnaire, it must maintain any completed case-specific written questionnaires in a manner and form approved by the court as part of the case file. Before conducting oral voir dire, the prospective jurors' responses to the case-specific written questionnaires must be provided to each party by the clerk or court. Any party or counsel receiving a copy of responses to the case-specific written questionnaires must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case. When jury selection is completed, each recipient must destroy or return to the court all copies of the responses to the case-specific written questionnaires ~~and answers to the clerk.~~

(c) Voir Dire Oath and Procedure.

(1) *Voir Dire Affirmation and Oath.* Each prospective juror must swear or affirm that the answers provided in response to the case-specific written questionnaires are truthful. Before oral voir dire, each prospective jurors must take an oath administered by the clerk. The oath's substance must be as follows: "You do solemnly swear (or affirm) that you will truthfully answer all questions about your qualifications to serve as a trial juror in this action, so help you God." If a prospective juror elects to affirm rather than swear the oath, the clause "so help you God" must be omitted.

(2) *Explanation of Voir Dire.* At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will

use the prospective jurors' information, and who may have access to the information prospective jurors provide.

(3) *Case-Specific Written Questionnaires.* Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The case-specific written questionnaire should include questions about the prospective juror's qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.

(4) *Brief Opening Statements.* Before oral voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.

(5) *Extent of Oral Voir Dire.*

(A) *Questioning by Court and Parties.* The court must conduct voir dire orally. During oral examination, the court must thoroughly question the jury panel to ensure that prospective jurors are qualified, fair, and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limits on the questioning. Written questions also may be used as provided in Rule 47(b)(2). A party's failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination.

(B) *Extent of Questioning.* Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a challenge for cause.

(d) Challenges for Cause.

(1) – (2) [No Change.]

(3) *Burden of Proof.* The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. In making its determination, the court must consider the totality of a prospective juror's conduct and answers given during voir dire.

(e) Alternate Jurors. [No Change.]

COMMENTS [as amended 2022]

2022 Amendment to Rule 47(c)(3)

To allow the process of challenging jurors for cause to work effectively, Rule 47(c)(3) encourages the use of case-specific written questionnaires during voir dire where feasible, deferring to the court on the method and manner of administration. Courts may use paper or electronic case specific questionnaires, administer case-specific questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

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The purpose of this amendment is to allow the trial judge to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. See T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, *The Judges' Journal* 9 (Summer 1990); A.B.A. *Standards Relating to Juror Use and Management*, Standard 7, at 68-74 (1983); and “The Jury Project,” *Report to the Chief Judge of the State of New York* 58-60 (1984).

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken.

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the juror jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

Appendix 1C: Proposed Amendments to the Rules of Criminal Procedure (Markup)

Rule 16.3. Pretrial Conference

(a) Generally. [No Change.]

(b) Objectives. [No Change.]

(c) Duty to Confer. Before the conference, the court may require the parties to confer and submit memoranda, including all oral and written questions to be asked of prospective jurors during voir dire, before the conference.

(d) Scope of Proceeding. At the conference, the court may:

(1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate;

(3) obtain stipulations to relevant facts; ~~and~~

(4) determine the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements; and

(45) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving ~~brief pre-voir dire opening statements and~~ preliminary instructions, and managing documents and exhibits effectively during trial.

(e) Stipulated Evidence. [No Change.]

(f) Record of Proceedings. [No Change.]

Rule 18.3. Jurors' Information

(a) Information Provided to the Parties. Before conducting oral voir dire examination, the court must ~~furnish~~ provide each party with a list of the names of the prospective jurors on the panel called for the case. The list must include each prospective juror's zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and any prior felony conviction within a specified time established by the jury commissioner or the court.

(b) Confidentiality of Eligibility and Biographical Information. The court must obtain and maintain juror information in a manner and form approved by the Supreme Court, and this information may be used only for the purpose of jury selection. The court must keep all jurors' home and business telephone numbers and addresses confidential; and may not disclose them unless good cause is shown.

(c) Confidentiality of Case-Specific Written Questionnaires. If the court requires prospective jurors to complete case-specific written questionnaires, it must maintain any completed case-specific written questionnaires in a manner and form approved by the court as part of the case file. Before conducting oral voir dire, the prospective jurors' responses to the case-specific written questionnaires must be provided to each party by the clerk or court. Any party or counsel receiving a copy of responses to the case-specific written questionnaires must not disclose the information to the public and may disclose the information only to the extent necessary for the proper conduct of the case. When jury selection is completed, each recipient must destroy or return to the court all copies of the responses to the case-specific written questionnaires.

Rule 18.4. Challenges

(a) **Challenge to the Panel.** [No Change.]

(b) **Challenge for Cause.** [No change]

COMMENT

~~**1973 Comment to Rule 18.4(b).** When the predecessor to this section was adopted in 1973, it replaced the catalog of 15 grounds set forth in the 1956 Arizona Rules of Criminal Procedure, Rule 219. The omission of the list is carried over to this amended rule and is intended to direct the attention of attorneys and judges to the essential question—whether a juror can try a case fairly. A challenge for cause can be based on a showing of facts from which an ordinary person would imply a likelihood of predisposition in favor of one of the parties.~~

~~In addition, a juror may be challenged who:~~

~~(1) has been convicted of a felony;~~

~~(2) lacks any of the qualifications prescribed by law to render a person a competent juror;~~

~~(3) is of such unsound mind or body as to render him incapable of performing the duties of a juror;~~

~~(4) is related by consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant;~~

~~(5) stands in the relationship of guardian and ward, attorney and client, master and servant, or landlord and tenant, or is an employee of or member of the family of the defendant, or of the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;~~

~~(6) has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;~~

~~(7) has served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;~~

~~(8) has served on the trial jury which has tried another person for the offense charged in the indictment or information;~~

~~(9) has been a member of the jury formerly sworn to try the same charge and whose verdict was set aside, or which was discharged without a verdict after the case was submitted to it;~~

~~(10) has served as a juror in a civil action brought against the defendant for the act charged as an offense;~~

~~(11) is on the bond of the defendant or engaged in business with the defendant or with the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;~~

~~(12) is a witness on the part of the prosecution or defendant or has been served with a subpoena or bound by an undertaking as such;~~

~~(13) has a state of mind in reference to the action or to the defendant or to the person alleged to have been injured by the offense charged or on whose complaint the prosecution was instituted, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party;~~

~~(14) if the offense charged is punishable by death, entertains conscientious opinions which would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror; or~~

~~(15) does not understand the English language sufficiently well to comprehend the testimony offered at the trial.~~

~~This section also permits a challenge for cause to be made whenever the cause appears. Under Rule 18.4(b), the trial court may deny the challenge if not seasonably made, but there is no absolute time limitation imposed by rule. Once the trial has begun, the prosecutor may be unable, because of double jeopardy, to invoke the right to challenge, unless there are sufficient alternate jurors to enable the trial to continue with one less juror.~~

Rule 18.5. Procedure for Jury Selection

(a) Swearing the Jury Panel. Each prospective juror must swear or affirm that the answers provided in response to the case-specific written questionnaire are truthful. Before oral voir dire, All members of the jury panel each prospective juror must swear or affirm that they will truthfully answer all questions concerning their qualifications.

(b) Explanation of Voir Dire. At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will use the prospective jurors' information, and who may have access to the information prospective jurors provide.

(c) Case-Specific Written Questionnaires. Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The written questionnaire should include questions about the prospective juror's qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.

~~(b)~~**(d) Calling Jurors for Examination.** The court must conduct voir dire orally. During oral examination, The the court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates. Alternatively, and at the court's discretion, all members of the panel may be examined.

~~(c)~~**(e) Inquiry by the Court; Brief Opening Statements.** Before orally examining the prospective jurors, the court must identify the parties and their counsel and, briefly outline the nature of the case, and explain the purpose of the examination. The court must then ask any necessary questions about the prospective jurors' qualifications to serve in the case. With the court's permission and before oral voir dire examination, the parties may present brief opening statements to the entire jury panel.

~~(d)~~**(f) Voir Dire Examination.** In courts of record, voir dire examination must be conducted on the record. The court must conduct a thorough oral examination of the prospective jurors and control the voir dire examination. Upon request, the court must allow the parties a reasonable sufficient time, with other reasonable limitations, to conduct a further oral examination of the prospective jurors. A party's failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination. However, the court may limit

or terminate the parties' voir dire on grounds of abuse. Nothing in this rule precludes submitting written questionnaires to the prospective jurors or examining individual prospective jurors outside the presence of other prospective jurors.

(e)(g) Scope of Examination. The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause.

(f)(h) Challenge for Cause. Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. In making its determination, the court must consider the totality of a prospective juror's conduct and answers given during voir dire. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel.

(g)(i) Stipulation to Remove a Prospective Juror. The parties may stipulate to the removal of a juror.

(h)(j) Selection of Jury; Alternate Jurors.

(1) – (3) [No Change]

(i)(k) Deliberations in a Capital Case.

(1) – (2) [No Change.]

COMMENTS [as amendment 2022]

2022 Comment to Rule 18.5(c). To allow the process of challenging jurors for cause to work effectively, Rule 18.5(b) encourages the use of case specific questionnaires during voir dire where feasible, deferring to the court on the method and manner of their administration. Courts may use paper or electronic questionnaires, administer questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

1995 Comment Rule 18.5(bd) (Formerly Rule 18.5(b)). Before a 1995 amendment, Rule 18.5(b) was interpreted to require trial judges to use the traditional "strike and replace" method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusing for cause a juror in the initial group. A juror excused for cause leaves the courtroom, after which the excused juror's position is filled by a panel member who responds to all previous and future questions of the potential jurors.

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The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. ~~Following disposition of the for cause challenges, the clerk calls the first 8 or 12 names, as the law may require, from those remaining on the list, plus the number of alternate jurors thought necessary by the judge who become the trial jury.~~

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the juror jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

2022 Comment Rule 18.5(df). When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors’ views narratively. The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law.

Appendix 1D: Proposed Amendments to the Rules of Criminal Procedure
(Clean)

Rule 16.3. Pretrial Conference

(a) Generally. [No Change.]

(b) Objectives. [No Change.]

(c) Duty to Confer. Before the conference, the court may require the parties to confer and submit memoranda, including all oral and written questions to be asked of prospective jurors during voir_dire.

(d) Scope of Proceeding. At the conference, the court may:

(1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate;

(3) obtain stipulations to relevant facts; ~~and~~

(4) determine the areas of inquiry and specific questions to be asked by the court and the parties during voir dire, including any limitations on written or oral examination and whether to permit the parties to give brief pre-voir dire opening statements; and

(45) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving preliminary instructions, and managing documents and exhibits effectively during trial.

(e) Stipulated Evidence. [No Change.]

(f) Record of Proceedings. [No Change.]

Rule 18.3. Jurors' Information

(a) Information Provided to the Parties. Before conducting oral voir dire examination, the court must provide each party with a list of the names of the prospective jurors on the panel called for the case. The list must include each prospective juror's zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and any prior felony conviction within a specified time established by the jury commissioner or the court.

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(b) Explanation of Voir Dire. At the beginning of any written or oral examination, the court must explain the purpose of voir dire, how the court and the parties will use the prospective jurors' information, and who may have access to the information prospective jurors provide.

(c) Case-Specific Written Questionnaires. Unless the court orders otherwise, the court should require each prospective juror to complete a case-specific written questionnaire in a manner and form approved by the court. The written questionnaire should include questions about the prospective juror's qualifications to serve in the case, any hardships that would prevent the prospective juror from serving, and whether the prospective juror could render a fair and impartial verdict.

(d) Calling Jurors for Examination. The court must conduct voir dire orally. During oral examination, the court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates. Alternatively, and at the court's discretion, all members of the panel may be examined.

(e) Inquiry by the Court; Brief Opening Statements. Before orally examining the prospective jurors, the court must identify the parties and their counsel and briefly outline the nature of the case. The court must then ask any necessary questions about the prospective jurors' qualifications to serve in the case. With the court's permission and before oral voir dire examination, the parties may present brief opening statements to the entire jury panel.

(f) Voir Dire Examination. In courts of record, voir dire examination must be conducted on the record. The court must conduct a thorough oral examination of the prospective jurors and control the voir dire examination. Upon request, the court must allow the parties sufficient time, with other reasonable limitations, to conduct a further oral examination of the prospective jurors. A party's failure to submit questions to the court prior to examination should not be grounds to deny a party the opportunity to conduct an oral examination. However, the court may limit or terminate the parties' voir dire on grounds of abuse. Nothing in this rule precludes submitting written questionnaires to the prospective jurors or examining individual prospective jurors outside the presence of other prospective jurors.

(g) Scope of Examination. The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit information relevant to asserting a possible challenge for cause.

(h) Challenge for Cause. Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. In making its determination, the court must consider the totality of a prospective juror's conduct and answers given during voir dire. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel.

(i) Stipulation to Remove a Prospective Juror. The parties may stipulate to the removal of a juror.

(j) Selection of Jury; Alternate Jurors.

(1) *Trial Jurors.* After the court has resolved any challenges for cause, the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

(2) *Selection of Alternates and Instruction.* Just before the jury retires to begin deliberations, the clerk or court official must determine the alternate juror or jurors by lot or stipulation. When the jury retires to deliberate, the alternate or alternates may not participate, but the court must instruct the alternate juror or jurors to continue to observe the admonitions to jurors until the court informs them that a verdict has been returned or the jury has been discharged.

(3) *Replacing a Deliberating Juror.* If the court excuses a deliberating juror due to the juror's inability or disqualification to perform the required duties, the court may substitute an alternate juror to join the deliberations, choosing the alternate from among the qualified alternates in the order previously designated. If an alternate joins the deliberations, the court must instruct the jury to begin its deliberations anew.

(k) Deliberations in a Capital Case.

(1) – (2) [No Change.]

COMMENTS

2022 Comment to Rule 18.5(c). To allow the process of challenging jurors for cause to work effectively, Rule 18.5(b) encourages the use of case specific questionnaires

during voir dire where feasible, deferring to the court on the method and manner of their administration. Courts may use paper or electronic questionnaires, administer questionnaires in advance of trial or immediately prior to oral voir dire, or use general or case-specific questions.

1995 Comment Rule 18.5(d) (Formerly Rule 18.5(b)). Before a 1995 amendment, Rule 18.5(b) was interpreted to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusing for cause a juror in the initial group. A juror excused for cause leaves the courtroom, after which the excused juror’s position is filled by a panel member who responds to all previous and future questions of the potential jurors.

As currently drafted, the trial judge is allowed to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. *See* T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, THE JUDGES’ JOURNAL 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and “The Jury Project,” Report to the Chief Judge of the State of New York 58-60 (1994). The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel.

Whether using strike-and-replace or the struck method, the rules do not prescribe a method for replacing an excused prospective juror in the juror jury box with a member of the panel, deferring to the court’s discretion on the appropriate method.

2022 Comment Rule 18.5(f). When feasible, the court should permit liberal and comprehensive examination by the parties, refrain from imposing inflexible time limits, and use open-ended questions that elicit prospective jurors’ views narratively. The court should refrain from attempting to rehabilitate prospective jurors by asking leading, conclusory questions that encourage prospective jurors to affirm that they can set aside their opinions and neutrally apply the law.

Appendix 1E: Proposed Amendments to Justice Court Rules of Civil Procedure (Markup)

Rule 134. Trials

a. Trial procedures. The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, shall be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The court may conduct an initial examination of prospective jurors by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Either after prospective jurors complete a case-specific written questionnaire or during an initial oral examination, ~~T~~the judge, and the parties, as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause based on answers on a case specific written questionnaire or during the course of questioning. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. Upon request, the judge may allow the parties to make brief opening statements to the prospective jurors before the questioning process. The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) – (13) [No Change.]

b. Motion for judgment as a matter of law. [No Change.]

Appendix 1F: Proposed Amendments to Justice Court Rules of Civil Procedure (Clean)

Rule 134. Trials

a. Trial procedures. The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, shall be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The court may conduct an initial examination of prospective jurors by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Either after prospective jurors complete a case-specific written questionnaire or during an initial oral examination, the judge, and the parties, as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause based on answers on a case specific written questionnaire or during the course of questioning. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. Upon request, the judge may allow the parties to make brief opening statements to the prospective jurors before the questioning process. The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) – (13) [No Change.]

b. Motion for judgment as a matter of law. [No Change.]

Appendix 1G: Proposed Amendments to Rules of Procedure for Eviction Actions (Markup)

Rule 12. Trial by Jury

a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court and the parties as the judge may allow, by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Failure to submit written voir dire questions a day before the panel is assembled, or by a date ordered by the court, waives the right to submit questions. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. After challenges for cause are exercised, a panel of seven jurors in justice court or nine jurors in superior court shall be assembled. One of the jurors shall be selected as the alternate after the evidence is presented and before deliberations.

b. – d. [No Change.]

Appendix 1H: Proposed Amendments to Rules of Procedure for Eviction Actions (Clean)

Rule 12. Trial by Jury

a. When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court and the parties as the judge may allow, by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Failure to submit written voir dire questions a day before the panel is assembled, or by a date ordered by the court, waives the right to submit questions. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. After challenges for cause are exercised, a panel of seven jurors in justice court or nine jurors in superior court ~~is available~~, shall be assembled. One of the jurors shall be selected as the alternate after the evidence is presented and before deliberations.

b. – d. [No Change.]