



The Advantages to Having an SJQ and Increasing Your Chances of Having an SJQ Admitted at Trial

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Obtaining insight into case-related juror attitudes and experiences is critical to making your jury deselection strikes count. The key to getting this information is a case-related trial supplemental juror questionnaire (SJQ). While gaining the acceptance of a supplemental juror questionnaire for trial is not guaranteed, there are several strategies that can be implemented to increase your chances of receiving the judge's approval. The strategies below begin well before the subject of an SJQ is raised with the court, as advanced preparation and anticipating potential pitfalls are vital for obtaining the court's permission to use a trial SJQ. Generally, one key to getting any SJQ admitted is to make the decision as easy and effortless as possible for your judge and court personnel.

Purpose

SJQs facilitate judicial economy, increase juror candor and decrease jury contamination. They also increase the wealth of information available about each juror before voir dire.

- *Judicial economy.* Use of the questionnaire will assist the parties in obtaining a thorough and probing voir dire for purposes of trial. Use of the questionnaire for background information will allow time normally spent eliciting that data from each juror to be spent on more probing questions about attitudes or prejudices. As a result, questioning at voir dire will be better focused, more selective and therefore, greatly facilitated.
- *Increasing candor.* In addition to providing background demographic information quickly and easily, use of a pre-voir dire questionnaire is likely to elicit more accurate and candid information from potential jurors. Answers to questions regarding sensitive issues are likely to be more candid in a written questionnaire than oral responses to questions in an open and crowded courtroom. Whereas the pressure of a courtroom situation might lead a potential juror to provide an incomplete oral response to a voir dire question, the questionnaire allows prospective jurors to think about the questions and their responses, and respond more accurately and completely, especially when coupled with assurances of greater confidentiality.
- *Decreasing jury contamination.* Exploring any potentially adverse responses in open court has the unpredictable potential for contaminating the entire panel with the strongly held viewpoints of one or a few individuals. In a lawsuit where potential jurors' biased attitudes

will be evident, it is even more likely that strongly held viewpoints exist that would be inappropriate for the entire panel of prospective jurors to consider.

Strategies

Step 1: Length of the SJQ. Ever since O.J. Simpson's trial where a 75-page questionnaire was used, the mention of using an SJQ with judges usually conjures up a long document with an overwhelming number of questions. When an SJQ's length is long and unmanageable, it is likely to be rejected in the process. One strategy to gaining the approval of an SJQ is to limit the length to two to three pages – the more concise the better. The judge needs to perceive the questionnaire will be a quick and easy process for jurors to complete.

Step 2: Negotiating with opposing counsel. The less the judge has to mediate the final questionnaire between the parties, the better. Therefore, judges are more inclined to approve an SJQ when both sides can agree to its final format. After developing your own short SJQ, we recommend to submit it to the other side to gain their acceptance. It is likely they will want to have a questionnaire as well, so they will either have their own questionnaire that will need to be merged with yours or they will want to add to yours. In either case, it is imperative that the parties show up at trial with a jointly-negotiated and agreed-upon SJQ. This typically will take some time; therefore, it will be important to start early for this step. It is never too early to begin drafting and negotiating the SJQ.

Step 3: Preparing a motion. Our experience has shown that if the SJQ is accompanied by a motion outlining the goals of its use that tends to educate the court about the questionnaire's benefits. Litigation Insights has provided our clients a sample motion in support of a supplemental juror questionnaire that argues the three purposes of using one – facilitating judicial economy, increasing juror candor and decreasing jury contamination. It also outlines Step 4 for the court.

Step 4: Hammering out the process. Judges typically do not want to waste the court's time and resources copying questionnaires. That is seen as an inconvenience to the court's process. Therefore, when approaching the court, we recommend having a plan in place to demonstrate to the judge that admitting a trial SJQ will not interfere with the court's personnel's job duties.

- We recommend the process of filling out the SJQ begin with mailing the questionnaire to prospective jurors to be returned to the jury clerk no later than seven (4-7) days before jury selection is to begin. This advanced timeframe will allow you to copy/scan, review and code the questionnaires. A number of hardships and cause strikes can also be handled in advance and ultimately save the court valuable time. To make this happen, we recommend your client offer to make all copies (or cover scanning costs) and cover all expenses (stamps, envelopes) to ease the costs to the court or both sides can offer to split the costs.
- Once the completed questionnaires arrive to the clerk's office, we recommend that one party (ideally this would be you) control the copying process by agreeing to organize and make arrangements to distribute the SJQs to the other side and to the court. Or copying can be avoided altogether by scanning the juror questionnaires and posting them to an FTP site or emailing the files. This can be done by a copy shop or your office. It tends to be the most efficient and fastest way to receive the questionnaires.

Conclusion

With the use of an SJQ, voir dire can begin with a wealth of information about the individuals on the panel and provide counsel with focused follow-up questions to better identify and deselect those jurors strongly predisposed against your case. Gaining approval of an SJQ is an important part of the jury selection process and utilizing the strategies outlined above will increase your chances of receiving that approval. Having more information about your jurors provides you and your client the opportunity to make more intelligent and informed deselection decisions. This can only improve your chances of filling the box with jurors who are receptive to your arguments.