

Jury Selection Handbook  
THE NUTS AND BOLTS OF EFFECTIVE JURY  
SELECTION

2022 SUPPLEMENT

Ronald H. Clark  
DISTINGUISHED PRACTITIONER IN RESIDENCE  
SEATTLE UNIVERSITY SCHOOL OF LAW

Thomas M. O'Toole  
PRESIDENT  
SOUND JURY CONSULTING

CAROLINA ACADEMIC PRESS  
Durham, North Carolina

Copyright © 2022  
Carolina Academic Press, LLC  
All Rights Reserved

**Carolina Academic Press**  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
E-mail: [cap@cap-press.com](mailto:cap@cap-press.com)  
[www.cap-press.com](http://www.cap-press.com)

## **ONLINE JURY SELECTION**

The COVID pandemic changed how trials were conducted. In several state and in federal jurisdictions, civil trials were held remotely. A major change, and one that is likely to remain in some venues, is the practice of conducting jury selection remotely over the Internet.

Remote jury selection was introduced as a public health measure so prospective jurors would not have to congregate in the courthouse. For many of the civil trials, the jurors and other players in the trial were remote for the whole trial while in other cases jurors came to the courthouse only for jury deliberations. Remote jury selection proved to be beneficial in another respect — prospective jurors do not need to take time off from work in order to come to the courthouse and wait to be sent out to a courtroom where they may be excused from jury service.

King County Superior Court in Washington State is used here as an example of how remote jury selection can be conducted.

### **Juror Questionnaires**

King County Superior Court utilizes two electronic juror questionnaires. The first is part of the fields that a juror completes online, and it just confirms the juror's service date. That is managed by the Superior Court's Juror Administrator. The trial judge never sees that questionnaire.

Prospective jurors are typically requested to complete a second electronic juror questionnaire a few days before the voir dire process begins. For example, prospective jurors will often complete their questionnaires on a Thursday or Friday, but wait until Monday to begin the voir dire process. The King County Superior Court second questionnaire is created online. After the court creates a draft of the questionnaire, it circulates the link to the attorneys for the parties, who review the questionnaire and suggest changes and additions. Most judges allow each side to submit a few additional questions. Once the questionnaire is finalized, the link is sent out to jurors via email. Usually, the jury pool will consist of 80 to 100 prospective jurors, but is larger when a lengthy trial is expected or the case involves sensitive or high-profile issues.

The questionnaire contains several sections and typically begins with instructions from the court and a neutral statement of the case. For example, the instructions often admonish prospective jurors against conducting internet searches about the case.

Other sections in the questionnaire collect background information about the jurors, ask them case-related questions, inquire about hardship, and assess COVID-related vulnerabilities.

All responses from prospective jurors are collected in a Microsoft Excel file, which is provide to the attorneys and parties once all prospective jurors have completed it.

This lengthy questionnaire is now used for every case while it was only used by some judges on the King County Superior Court bench prior to the pandemic. The lawyers and the judge review the responses to the case-specific questionnaires and excuse jurors who may not be able to serve on the particular trial. Consequently, these prospective jurors are excused without having to come to the court or appear on Zoom for voir dire.

### **The Panel**

Because the computer could not accommodate the full jury pool for voir dire, the King County Superior Court divides the pool into panels of 10 to 20 prospective jurors to be shown on the computer screen. The jury selection process is conducted in the same manner as it would be if done in a courtroom, and it takes roughly 90 to 120 minutes per panel, with three panels per day. In general, three to six panels are exhausted before the jury is constituted. In many cases where a sufficient number of prospective jurors have been qualified and been passed for cause before all panels have been voir dire'd, the judge will excuse any remaining panels and move to peremptory strikes.

If the court decides that a prospective juror should be questioned outside the presence of the other members of the panel, the judge can place the prospective juror into a Zoom breakout room where the questioning can take place.

### **Preparation and Performance**

Much of what you should do to effectively prepare and perform an in-person courtroom jury selection applies to remote jury selection. For instance, counsel should dress in courtroom attire and have the client likewise dressed appropriately.

Preparation for online jury selection requires a few extra steps beyond preparation for a courtroom jury selection. The lighting, audio and camera angle should be tested. It is best if the lighting comes from in front of and above counsel because being backlit can washout counsel's expressions. The physical background should be professional, preferably neutral. The background should neither be a virtual one, which courts disfavor, or one that is distracting. It is often helpful to have a bookcase or something similar in the background to help provide depth to counsel's image on the screen, which can enhance the quality of his or her appearance online.

You have control over how you are perceived by the prospective jurors. The camera angle should show your face straight forward, rather than in profile because eye contact is always an important part of communication. Your face should be close enough to the camera so that the jury can see your expressions. However, you do not want to be too close because too large a facial image can be domineering.

There is more of an intimacy when you are speaking with a prospective juror over the Internet instead of in a courtroom. You are face to face with the juror during remote jury selection, not at

some distance and perhaps pacing in the courtroom. Nevertheless, you can use your facial expressions and hand gestures to emphasize a point. A conversational tone of voice is best for this setting.

Most important, practice with your equipment, lighting, and background before remote jury selection.

### **Assessing Prospective Jurors Remotely**

Aspects of remote jury selection are beneficial to counsel in trying to assess a prospective jurors' suitability for the case. Because prospective jurors are in their own home or other setting rather than a formal courtroom setting, they tend to be more comfortable and willing to share their views. Additionally, the panel process ultimately provides more time to get to know your prospective jurors. For example, in King County, most judges allow the attorneys from each side 40 minutes each to question the panel (typically divided into two 20-minute segments for each side). 40 minutes to question 10 to 20 prospective jurors is a lot of time and allows you to learn a lot about your prospective jurors, especially in conjunction with the questionnaire responses. Also, you get a close-up view of the person's face and can better read their expressions.