



MANAGING A JURY TRIAL IN THE JUSTICE/MUNICIPAL COURT

A PRACTICAL GUIDE

Law Relating to Juries and Jury Selection



Law Relating to Juries

Jury Qualifications

- **Determining Qualifications.**

- Qualified Elector = 18 and Lives in County/Township/City (NRS 67.010)
- Does not need to be registered to vote.
- “Sufficient” English Proficiency
- Not an Ex-Felon
- Not Physically Infirm (Medical Excuse)
- Not Mentally Infirm (Judicial Declaration)
- NRS 67.010 Summoning of jury.
 - 1. The jury must be summoned upon an order of the justice from, except as otherwise provided in subsection 2, the qualified electors, whether or not registered as voters, of the city, precinct or township, and not from the bystanders.
 - 2. In a county whose population is 700,000 or more, the justice may summon to the court, from the qualified electors of the county, whether or not registered as voters, and not from the bystanders, the number of qualified jurors which the justice determines is necessary for the formation of a jury.

- **NRS 6.010. Persons qualified to act as jurors.**

- Except as otherwise provided in this section, every **qualified elector** of the State, **whether registered or not**, who has **sufficient knowledge of the English language**, and who has not been **convicted of treason, a felony, or other infamous crime**, and who is not rendered **incapable by reason of physical or mental infirmity**, is a qualified juror of the county in which the person resides. A person who has been convicted of a felony is not a qualified juror of the county in which the person resides until the person's civil right to serve as a juror has been restored pursuant to NRS 176A.850.

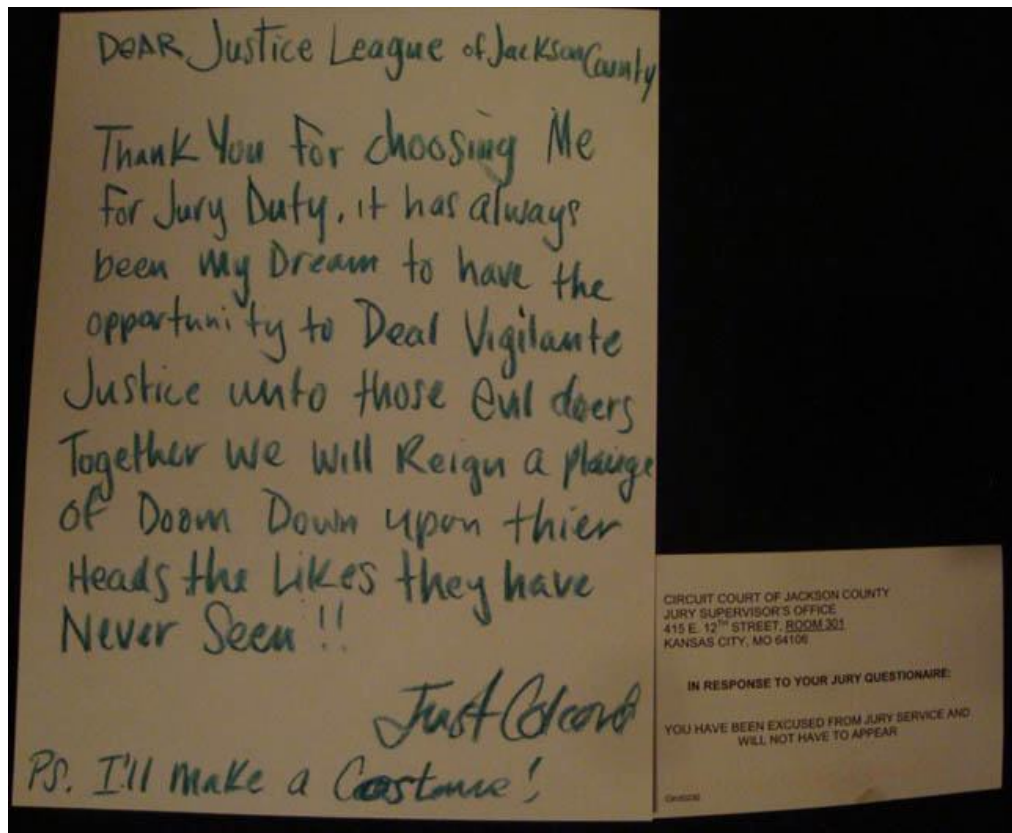
EXEMPTIONS FROM JURY SERVICE

• **Mandatory Exemptions When Requested**

- **These Exemptions are mandatory excuses when requested by the individual summoned juror.**
- **The Court can require documentary evidence in support of the claimed exemption.**
- **The police officer exemption is relatively broad . . . It does not exempt retired police officers.**
- **The court shall permanently excuse any person from service as a juror if the person is incapable, by reason of a permanent physical or mental disability, of rendering satisfactory service as a juror. The court may require the prospective juror to submit a certificate completed by a physician or an advanced practice registered nurse licensed pursuant to NRS 632.237 concerning the nature and extent of the disability and the certifying physician or advanced practice registered nurse may be required to testify concerning the disability when the court so directs.**

• **NRS 6.020 Exemptions from service.**

- 1. Except as otherwise provided in subsections 2 and 3 and NRS 67.050, upon satisfactory proof, made by affidavit or otherwise, the following-named persons, and no others, are exempt from service as grand or trial jurors:
 - (a) While the Legislature is in session, any member of the Legislature or any employee of the Legislature or the Legislative Counsel Bureau;
 - (b) Any person who has a **fictitious address** pursuant to NRS 217.462 to 217.471, (**victims of domestic violence, human trafficking, sexual assault or stalking**); and
 - (c) **Any police officer** as defined in NRS 617.135.
- 2. All persons of the **age of 70 years or over** are exempt from serving as grand or trial jurors. Whenever it appears to the satisfaction of the court, by affidavit or otherwise, that a juror is over the age of 70 years, the court shall order the juror excused from all service as a grand or trial juror, **if the juror so desires.**
- 3. A person who is the **age of 65 years or over** who lives 65 miles or more from the court is exempt from serving as a grand or trial juror. Whenever it appears to the satisfaction of the court, by affidavit or otherwise, that a juror is the age of 65 years or over and lives 65 miles or more from the court, the court shall order the juror excused from all service as a grand or trial juror, **if the juror so desires.**



EXCUSES, EXCUSES, EXCUSES

- **TEMPORARY / DISCRETIONARY EXCUSES**

- Each individual judge presiding over the trial determines whether to grant a temporary excuse.
- May Occur Pre-Trial or During the Voir Dire
- These are not reasons for causal challenges.

- **JUROR SUMMONS**

- **Send a Letter with the Jury Summons Containing both Exemptions and Temporary Excuses.**
- You will get multiple requests to be excused.
- Work related excuses...usually not accepted.
- It is unlawful for an employer to take any negative action against an employee or dissuade a summoned juror from service. NRS 6.190

- You will hear every reason in the Book and there are plenty out there.

- **NRS 6.030 Grounds for excusing jurors.**

- 1. The court may at any time temporarily excuse any juror on account of:
 - (a) Sickness or physical disability.
 - (b) Serious illness or death of a member of the juror's immediate family.
 - (c) Undue hardship or extreme inconvenience.
 - (d) Public necessity.
- 2. In addition to the reasons set forth in subsection 1, the court may at any time temporarily excuse a person who provides proof that the person is the primary caregiver of another person who has a documented medical condition which requires the assistance of another person at all times.

VOIR DIRE AND JURY SELECTION



THE LAW RELATING TO VOIR DIRE

- **ABILITY TO IMPARTIALLY CONSIDER THE FACTS**

- Can the Juror listen to the evidence with an open mind and make their own independent determination as to the truth of the evidence presented?
- This does not mean that jurors cannot have life experiences. But, whether there is something that would prevent the juror from listening to the evidence or having their mind made up from the get go.

- **ABILITY TO APPLY THE LAW AS DIRECTED BY THE COURT**

- Whether a juror's views would prevent or substantially impair the performance of their duty in accordance with the Court's instructions and the juror's oath?
- **WILL THE JUROR FOLLOW THE COURT'S INSTRUCTIONS!**
- *Khoury v. Seastrand*, 132 Nev. 520 (2016)

HOW TO CONDUCT VOIR DIRE

- **Clerk's Duties:**

- Check in All Jurors who appeared
- Randomly select Jurors from those who appeared.
- Call jurors to the Box.
- If a juror is excused, call next randomly selected juror.
- **Swear in the Prospective Jurors with the Qualification OATH prior to any Questioning by the Court or Counsel.**

- DO EACH OF YOU SOLEMNLY SWEAR THAT YOU WILL WELL AND TRULY ANSWER ALL QUESTIONS PUT TO YOU TOUCHING UPON YOUR QUALIFICATIONS TO SERVE AS TRIAL JURORS IN THE CASE NOW PENDING BEFORE THIS COURT, SO HELP YOU GOD OR UNDER THE PAINS AND PENALTIES OF PERJURY?

METHODS

- **EVERY JUDGE CONDUCTS VOIR DIRE DIFFERENTLY – THERE IS NO SINGULAR “RIGHT WAY”**

- **Voir dire (“To Speak the Truth”)** is the **process** by which prospective jurors are questioned about their backgrounds and potential biases before being chosen to sit on a jury.
- **NRS 175.031 Examination of trial jurors.** The court shall conduct the initial examination of prospective jurors, and defendant or the defendant's attorney and the district attorney are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination must not be unreasonably restricted.

- **Jury Composition**

- 6 Jurors Try the Case (NRS 175-021(3))
- Each side has 4 Peremptory Challenges (NRS 175.051(2))
- Each side has unlimited Causal Challenges (NRS 175.036)
- Start with 14 in the Box – Why?
- Choose Your Alternates – 1 or 2 should be plenty – for 1 or 2 each side has 1 peremptory challenge. (NRS 175.061)

IT AIN'T NO BULL



CHALLENGES FOR CAUSE

- **Actual Bias.** Actual bias arises when potential jurors admit that they wouldn't be able to be impartial. For example, a juror who states that she would never vote for a guilty verdict in any case because her religious beliefs.
- **Inferred Bias.** Bias is inferred when the juror disclosed facts during voir dire that show an average person in the juror situation would not be able to be unbiased.
- **Potential Bias.** Doubts by juror as to impartiality and ability to follow the law.
- **Implied Bias.** Implied bias is present when potential jurors have character traits or personal experiences that make it unlikely for them to be able to be impartial, regardless of what they say during voir dire. So, a juror who is a close friend or relative of a key party, a witness, the judge, or an attorney for either side will be dismissed for cause. Bias is also implied when a would-be juror's background or experience is likely to create a predisposition in favor of a party to the case.

Sayedzada v. State, 134 Nev. Adv. Op. 38 (COA 2018)

QUESTIONING BY THE COURT

- Questions by the Court:

- If the Court were to instruct you at the conclusion of this case that, “A DEFENDANT IN A CRIMINAL ACTION IS PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS PROVEN BEYOND A REASONABLE DOUBT, AND IN CASE OF A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT’S GUILT IS SATISFACTORILY SHOWN, HE IS ENTITLED TO BE ACQUITTED,” would each of you accept and follow that instruction? (NRS 175.191)
- If the Court were to instruct you that, “A REASONABLE DOUBT IS ONE BASED ON REASON. IT IS NOT POSSIBLE DOUBT, BUT IS SUCH DOUBT AS WOULD GOVERN OR CONTROL A PERSON IN THE MORE WEIGHTY AFFAIRS OF LIFE. IF THE MINDS OF THE JURORS, AFTER THE ENTIRE COMPARISON AND CONSIDERATION OF ALL THE EVIDENCE, ARE IN SUCH CONDITION THAT THEY CAN SAY THEY FEEL AN ABIDING CONVICTION OF THE TRUTH OF THE CHARGE, THERE IS NOT A REASONABLE DOUBT. DOUBT TO BE REASONABLE MUST BE ACTUAL NOT MERE POSSIBILITY OR SPECULATION,” would each of you accept and follow that instruction? (NRS 175.211)

- Model Questions – See Bench Book/Trial Script

- Some suggestions:

- Do any of you have any business or personal reason which you feel would **interfere** with your **impartiality** as a juror in this case?



TRIAL OF A CHALLENGE

- **Challenges for Cause shall be tried by the Court** (NRS 175.036)
- **Process:**
 - 1. The Court may strike a juror sua sponte if the Court determines that there is an actual, implied or inferred bias. – Always give Counsel the opportunity to rehabilitate.
 - “It appears that this may not be the right trial for Juror ___ to sit on, does counsel have any questions? Does Counsel have any objections to the Court excusing Juror ___?”
- 2. Counsel may object to a Juror based upon an answer received during voir dire.
- Allow opposing Counsel to inquire and argue.
- The Court may also inquire – especially if the standard posed to the juror is ambiguous or unclear.
 - “Do you feel that you will be unable to listen to the evidence, determine the facts and apply the law based upon ?”

EXERCISING PEREMPTORY CHALLENGES

- **CONDUCTED OUTSIDE THE PRESENCE OF THE JURORS – IN CHAMBERS OR IN OPEN COURT – WITH CLERK AND COURT REPORTER PRESENT**
- Alternate challenges with State going first. (NRS 175.051)
- Process determines which jurors will be excused if a party does not exercise a peremptory.
- **Batson v. Kentucky**
 - A Batson challenge is made if a party feels a peremptory is being made for a discriminatory purpose. (Race, Gender, Ethnicity, Employment)
- **3 Step Analysis must be conducted on the record!!!!**
 - 1. Prima Facie Case of Discriminatory Purpose;
 - 2. Neutral Explanation; and
 - 3. Court's determination. Be Clear on why you are ruling the way you do.

SEATING THE JURY

- **Process:**

- Clerk Calls Trial Jurors to the Box
- Court excuses non-selected
- Court gives preliminary instructions/admonitions
- Clerk gives Jury the Oath
- Do you and each of you solemnly swear that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given, so help you God. (Or under the pains and penalties of perjury) (NRS 175.111)

- **Admonitions:**

- Must be given at each recess!!!!
- Every time the jury leaves the Courtroom until deliberations.
- **NRS 175.401 Jury to be admonished at each adjournment.** At each adjournment of the court, whether the jurors are permitted to separate or depart for home overnight, or are kept in charge of officers, they must be admonished by the judge or another officer of the court that it is their duty not to:
 - 1. Converse among themselves or with anyone else on any subject connected with the trial;
 - 2. Read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation newspapers, television and radio; or
 - 3. If they have not been charged, form or express any opinion on any subject connected with the trial until the cause is finally submitted to them.

OTHER ISSUES YOU WILL DEAL WITH

- **Jury Questions:**

- Two schools of thought.
- **Always** have juror put in writing and confer with Counsel outside the jury's presence or side bar prior to asking a juror question.
- Ultimately, you make the determination of relevance and admissibility.

- **Juror's Notes:**

- NRS 171.131 – Give them pencil and pad.
- Remains in Courtroom until deliberation.
- Collect following deliberation and shred.

- **Juror Accommodations:**

- **NRS 175.421 Accommodations for jury upon retirement; power of court to furnish.** A room shall be provided by the sheriff of each county for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery, unless such necessaries have been already furnished by the county. The court may order the sheriff to do so, and the expenses incurred by the sheriff in carrying the order into effect, when certified by the court, shall be a county charge.
- **NRS 175.431 Jury provided food and lodging when kept together.** While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided, at the expense of the county, with suitable and sufficient food and lodging.

Judge Richard Scotti swears and hurls a book against a courtroom wall during jury selection.

September 12, 2019 - 12:08 pm

District Judge Richard Scotti swore and hurled a pocket U.S. Constitution against a courtroom wall during jury selection in the trial of Jose Azucena, a man accused of child rape. (Clark County District Court Records)

<https://youtu.be/rbnA0tKmjaU>

DEALING WITH JURORS CAN BE DIFFICULT AT TIMES. YOU WILL HEAR ALL KINDS OF EXCUSES. MAYBE WE CAN HANDLE OUR FRUSTRATIONS A LITTLE BETTER.

QUESTIONS?

