

# JURY SELECTION IN IOWA'S STATE COURTS

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## Jury Selection Method

- Rule 2.18 sets out method of selecting jury in a criminal case
  - Depending on level of charge, the state and defendant "shall each strike"
  - 2.18(11), multiple defendants, each Defendant one half the strikes, state total number of strikes allocated to the defense
- Rule 1.915, sets out method of selecting jury in civil case
  - Rule 1.915(7): "Each side must strike four jurors."
  - Additional Strikes: Zaw v. Birusingh, 974 N.W.2d 140 (Iowa Ct. App. 2021)

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## Use of Questionnaires

- Needs to be approved in advance
- Considerations
  - What is the purpose
  - Brevity and time considerations
  - Avoid repetition
  - Is it overly invasive?

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## Let the Jurors Talk

- Issues you need to hear from each juror on (jury bias)
  - Ask your question clearly
  - Ask it in a way that demands a response
  - Wait for jurors to respond and engage them
- Issues where you are just trying to make a point (the cookie jar)
  - You should still engage the jurors
  - Covid voir dire
- Consider whether it's more effective to ask direct questions and not skirt around issues
  - More likely to get honest answers
  - Jurors appreciate the candor

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## Object to Objectionable Conduct

- "Voir dire is not designed for educating jurors on the law or for persuading them on the merits of the case."
- "To test the qualification of persons called to sit as jurors neither party may inquire concerning ... views of evidence to be adduced on the trial or the weight [the juror] would be inclined to attach thereto."
- State v. Martin, 877 N.W.2d 859 (Iowa 2016).

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### Object to Objectionable Conduct

- Attorney provides excessive personal information about themselves
- Attorney makes factual claims about the case
- Attorney makes inappropriate assertions of the law
  - Consider asking for preliminary instructions
- Presenting “hypotheticals” that mirror facts in the case
- Attorney strikes jurors based on protected class (race, sex) – Batson
- Court’s cannot rehabilitate juror who expresses actual bias (based on race, ethnicity, sex, sexual orientation) through persistent questioning regarding whether the juror would follow instructions from the court – State v. Jonas, 904 N.W.2d 571 (Iowa 2017)

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- State v. Martin, 877 N.W.2d 859, 869 (Iowa 2016)
  - Jurors thoughts about confidential informants okay. You may probe juror’s thoughts on case-specific categories of witnesses (e.g. homeless individual).
  - Prosecutor’s hypothetical asking jurors to imagine themselves as drug dealers and asking whether they would give weight to surreptitious audio recordings were inappropriate. However, trial court sustained objections and redirected questioning so there was no harm.
  - Footnote making it clear that prosecutor statement about being accountable to voters was not accurate law (assistant county attorney not elected).
- State v. Reed, 482 N.W.2d 672 (Iowa 1992)
  - District Court abused discretion by informing jury that witness was subject to pending criminal charges
  - Harmless error because court did not tell jury whose witness was being referred to
- State v. Dillman, 168 N.W. 204 (Iowa 1918)
  - Objection to voir dire question “Would the fact that the defendant ran away after the shooting prejudice your mind in any way?” properly sustained.

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### Juror Bias

- It is your job to investigate juror bias and then object
- Move to strike for cause
- Ask to be afforded an additional strike if improperly denied
  - “In order to show prejudice when the district court improperly refuses to disqualify a potential juror under Iowa Rule of Criminal Procedure 2.18(5)(k) and thereby causes a defendant to expend a peremptory challenge under rule 2.18(9), the defendant must specifically ask the court for an additional strike of a particular juror after his peremptory challenges have been exhausted.”
- If it comes up during trial, move to strike and add alternate, move for a mistrial

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### State v. Webster, 865 N.W.2d 223 (Iowa 2015)

- Juror in murder trial knew victim’s family, liked victim’s mothers’ facebook post of “give me strength”
- Trial affirmed, although Court expressed concerns
- Court critical of the “limited nature of the advocacy” and the “limited record developed below”
  - Jury selection was not reported
  - No evidence juror provided false information – Juror was not asked
  - Failure to volunteer insufficient to grant new trial
  - Juror was questioned after defense rested and defense failed to inquire further, move to strike for cause, or move for a mistrial

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### State v. Christensen, 929 N.W.2d 646 (Iowa 2019)

- Juror alleged to have made statement in coffee shop that defendant was guilty
- Rumors of a riot if Defendant was not convicted were briefly discussed by jury
- Trial affirmed
  - Juror denied coffee shop statements, no direct evidence
  - No evidence any jurors saw the facebook post where the riot rumor originated
  - No evidence rumor of riot impacted jury deliberations – defense “failed to show a reasonable probability that the verdict of the jury would have been different if the extraneous influence did not reach the jury in this case.”

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### Stop Wasting Your Jury’s Time

- Jurors’ biggest frustration is that attorneys do not respect their time.
- Jury Service is a HUGE FINANCIAL DETRIMENT TO JURORS
  - Jurors have told me they are unable to make rent
  - Concerned about buying groceries for family while on jury service
  - Each day of trial is one less day of work for these jurors
- Be prepared to start when jury arrives
- Resolve issues that could result in bench conferences when jury is not present
- Stipulate to exhibits where you can, ask to address exhibit issues in advance
- Get to the point, Jurors appreciate clarity and brevity

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